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Confederation of Tomorrow Conference  
Nov. 1967 – Statements and Speeches  
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STATEMENT BY THE  
PRIME MINISTER  
ON  
LANGUAGE RIGHTS



(for use after discussion on Item 2(a))

1. I am pleased as I am sure you are at the consensus which seems to be emerging with regard to language rights. I believe that we have heard at this Conference, from most Premiers and certainly from the Government of Canada, a firm expression of intention that French Canadians outside of Quebec should have the same rights as English-speaking Canadians in Quebec. This is the burden of what the Royal Commission recommended. The principal difference among us concerns whether there should first be a declaration of principle, in the law or in the constitution, and then a planned program for implementation, or whether the plan for implementation should precede the legislative or constitutional action.

2. The declarations of principle are, in our view,





extremely important: French Canadians have for too long been asked to accept generalities. I would hope this Conference accepts the consensus as I have expressed it: that we around this table are determined to assure to French-Canadians outside of Quebec the same rights as those enjoyed by English-speaking Canadians inside Quebec.

3. If this is the consensus, then I think our next step must be to undertake the job of determining how best to realize this goal quickly. This can best be done, I should think, by establishing a special committee of officials, for this purpose. Such a committee would be of assistance both to this conference, and as a forum in which individual governments could exchange views as to how they might accelerate the achievement of linguistic equality. For its part, the federal government would look to this committee as the forum in which the nature of federal assistance to the provinces could be considered.







4. There should of course be an appropriate working relationship between this committee and the machinery this Conference establishes for the further review of the Constitution. But this can be worked out later, under Item 3 on the agenda.

5. I hope we will not under-emphasize the importance of developing a plan of action for achieving our goal. The federal government, and almost all of the provinces, are, I think, prepared to proceed by governmental action to achieve this goal. The Royal Commission has recommended that this should be done constitutionally as well, by amending Sections 93 and 133 of the Constitution. What probably concerns some of the Premiers about constitutional action is the wisdom of establishing constitutional guarantees before they know they are able to fulfill them. I can understand a reluctance to provide the guarantee first, in the full knowledge that it will take time to live up to it.







This is why it is so important to work out realistic and practical plans of implementation now.

6. This much we all can subscribe to, I am sure.

But I would hope none would object to the formulation of guarantees to be accepted by those governments which are prepared to agree to a constitutional amendment now. The Government of Canada is one of those: I hope there are some provincial governments prepared to do the same. Therefore I would suggest that this Conference consider amendments to the Constitution - Sections 93A and 133 - along the lines proposed by the Royal Commission on Bilingualism and Biculturalism, but with provision for their progressive application across Canada as provincial governments feel able to accept them. Such a procedure would mean that the language guarantee would apply across Canada insofar as federal jurisdiction is concerned, within a matter of months - just as soon as we can agree on the precise wording of these two specific sections - and also apply insofar as provincial jurisdiction is concerned in those





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provinces which are prepared to join the federal government, shortly, in this approach. This may be a rather novel method of constitutional amendment - an "opting-in" procedure - and one which should not serve as a precedent in respect of other amendments. But this is an exceptional question of exceptional urgency, on which we have achieved a consensus which justifies exceptional methods.

7. May I say a word, finally, about the relationship between these proposed amendments to the Constitution, and the suggested Charter of Human Rights. The Government of Canada has not said that linguistic guarantees should from the beginning be made a part of the Charter. On pages 6 and 7 of our Statement of Policy we said first priority should be given to the recommendations of the Royal Commission on Bilingualism and Biculturalism; on pages 20 and 21 we said that Part IV of the Charter on Human Rights - the part having to do with linguistic rights - should be related





to the recommendations of the Royal Commission. What we are suggesting is that when constitutional language guarantees apply across Canada - before too long, I would hope - and when a Charter of Human Rights has been agreed upon, the guarantee of language rights could be placed in a Part IV of the Charter, if at that time it seemed desirable to do so.

I visualize five steps, in other words:

- (1) Recognition by this Conference that as a matter of equity French-speaking Canadians outside of Quebec should have the same rights as English-speaking Canadians in Quebec;
- (2) Recognition of the desirability of proceeding by governmental action as speedily as possible, in ways most appropriate in each province;
- (3) Constitutional amendments which would





guarantee these rights, along the lines recommended by the Royal Commission on Bilingualism and Biculturalism, which would enable progressive application of the guarantees across Canada, as the Provinces agreed.

- (4) Establishment of a special committee to consult on the methods of implementation, including the nature of federal assistance to be made available, and to consider the form the constitutional amendment should take.
- (5) Agreement to consider the consolidation of the constitutional guarantees in a Charter of Human Rights when the Charter has been agreed upon.

Ottawa  
6 February, 1968





STATEMENT BY THE HONOURABLE <sup>A. A. WISHART</sup>~~JOHN ROBERTS~~  
~~ATTORNEY GENERAL~~  
~~PRIME MINISTER~~ OF ONTARIO

Government  
Publications

TO THE  
FEDERAL-PROVINCIAL CONFERENCE OF  
PRIME MINISTERS AND PREMIERS,  
RESPECTING A CANADIAN BILL OF RIGHTS  
OTTAWA, FEBRUARY 6th, 1968.

See p 5



I AM SURE THAT ALL OF US APPRECIATE THE SIGNIFICANCE OF THE DOCUMENT THAT HAS BEEN PLACED BEFORE US BY THE MINISTER OF JUSTICE - THE PROPOSED CANADIAN CHARTER OF HUMAN RIGHTS REFLECTS NOT ONLY THE INSIGHT AND KNOWLEDGE OF A MAN DEDICATED TO HIS FELLOW CANADIANS BUT IT REVEALS THE UNDERSTANDING OF A LAWYER WHO HAS TEMPERED HIS SUBJECT WITH KNOWLEDGE GAINED IN A WIDE EXPERIENCE. WE WILL BE INDEBTED TO HIM FOR THIS ASSISTANCE AND GUIDANCE AS WE ALL CONSIDER THE DEFINITION OF OUR FUNDAMENTAL RIGHTS, FOR HIS PRINCIPLES ARE WORTHY OF OUR GREATEST CONSIDERATION.

THE PROBLEMS INHERENT IN THE CONSIDERATION OF A BILL OF RIGHTS FOR A FEDERAL SYSTEM ARE NOT ADAPTED TO EASE OF SOLUTION. THE DEFINITION AND ENFORCEMENT OF THE RIGHTS OF MAN HAS BEEN A RESPONSIBILITY OF DEMOCRATIC GOVERNMENT IN EVERY ORGANIZED SOCIETY KNOWN TO HISTORY AND THE MANNERS OF DEFINITION AND ENFORCEMENT ARE AS VARIED AS THE FORMS OF GOVERNMENT WHICH DEVELOPED THEM. THERE ARE PRINCIPLES, HOWEVER, WHICH MUST BE CONSIDERED IN AN ANALYSIS OF ANY PROPOSAL FOR A BILL OF RIGHTS.

....





IN 1960 A BILL OF RIGHTS WAS ENACTED WHICH MANY PEOPLE CONSIDERED UNSATISFACTORY, BUT WHICH WAS A VALIANT ATTEMPT TO PROVIDE A PARTIAL SOLUTION WITHIN AN AREA OF COMPETING LEGISLATIVE SYSTEMS. THE RESOLUTION OF THESE INCONSISTENT SYSTEMS WITHIN OUR FEDERATION HAS RESULTED IN A BILL WHICH IS DECLARATORY ONLY. THE COMMON LAW WHERE IT APPLIES HAD EARLIER ESTABLISHED THE SAME RIGHTS. THE BILL OF 1960 APPLIED ONLY TO ONE JURISDICTIONAL FIELD AS THE FEDERATION HAS DISTRIBUTED ITS POWERS. UNFORTUNATELY IT IS OF NO GREATER FORCE THAN ANY OTHER STATUTE SINCE WE HAVE NO METHOD OF AMENDING OUR CONSTITUTION TO INCLUDE IT WITHIN THAT FRAMEWORK.

IN THIS CONTEXT WE MAY NOW CONSIDER THE PRINCIPLES INHERENT IN A BILL OF RIGHTS.





CANADA IS FOUNDED UPON CONSTITUTION THAT IS BOTH WRITTEN AND UNWRITTEN. AS A FEDERATION IT WAS NECESSARY TO DEFINE A DISTRIBUTION OF POWERS AND A METHOD OF GOVERNMENT WHICH GAVE US A WRITTEN CONSTITUTION FOR OUR PARLIAMENTARY AND LEGISLATIVE SYSTEMS. AS A CREATURE OF THE PARLIAMENTARY SYSTEM WE HAVE AN UNWRITTEN CONSTITUTION BASED UPON THE COMMON LAW WITH A CIVIL CODE IN THE PROVINCE OF QUEBEC. THE SUBSTANCE OF OUR CIVIL RIGHTS WAS LEFT IN AN UNWRITTEN FORM FOR GOOD REASON AS REFLECTED IN THE HISTORY OF THE 19TH CENTURY.

THE DEBATES ON CONFEDERATION INDICATED THAT WE TOOK OUR EDUCATION ON THE MATTER OF A CONSTITUTION IN PART FROM THE UNITED STATES - THEN A RELATIVELY NEW FORM OF FEDERATED STATE. THE CONSTITUTION OF THE U.S.A. VESTED THE CRIMINAL LAW POWER IN THE STATES WHICH WAS A NECESSITY ARISING FROM THEIR HISTORY. IT IS IN THIS AREA THAT WE FIND THE GREAT BULK OF FUNDAMENTAL INDIVIDUAL RIGHTS - FREEDOM FROM ARBITRARY ARREST AND DETENTION, FREEDOM OF SPEECH, RIGHT TO TRIAL BY JURY, RIGHT TO APPEAR AND BE HEARD AND MANY OTHERS.

IN SUCH A SITUATION IT WAS OBVIOUSLY NECESSARY TO PROTECT THE RIGHTS OF THE INDIVIDUAL ON A UNIFORM BASIS THROUGHOUT THE NATION AND THIS COULD ONLY BE DONE BY A BILL OF RIGHTS WHICH NOW MUST ESTABLISH UNIFORM RIGHTS AMONGST FIFTY DIFFERENT CRIMINAL LAW JURISDICTIONS. THE DRAFTSMEN OF THE CANADIAN CONSTITUTION RECOGNIZED THIS PROBLEM, AND SIR JOHN A. MACDONALD IN HIS STATEMENTS OF THE DAY MADE IT CLEAR THAT CANADA MUST BE BLESSED WITH A UNIFORM CRIMINAL LAW THROUGHOUT





THE LAND.

IN RETROSPECT WE FIND AN INTERESTING COMMENTARY ON THE EFFECT OF A BILL OF RIGHTS. IN THE UNITED STATES TODAY, NOTWITHSTANDING AN ENTRENCHED BILL OF RIGHTS EXPRESSED IN THE CLEAREST TERMS, WE FIND A CONTINUING AND BITTER BATTLE THAT STILL RESULTS IN A DISPARITY BETWEEN THE RIGHTS OF THE INDIVIDUAL FROM STATE TO STATE WHICH IS UNKNOWN TO THE COUNTRIES WITHOUT AN ENTRENCHED BILL OF RIGHTS.

SIMILARLY, BUT WITHOUT STRESSING THE POINT, WE MUST NOTE THAT THE U.S.S.R. HAS PERHAPS THE MOST DETAILED BILL OF RIGHTS OF ANY NATION.

THE PRINCIPLE WHICH MAY HAVE CONTRIBUTED TO THIS RESULT AND WHICH ALSO EXPLAINS THE COURSE FOLLOWED BY THE FRAMERS OF OUR CONSTITUTION, IS FOUND IN THE JUDICIAL EXPRESSION OF THE COMMON LAW. THE FLEXIBILITY IN THE UNWRITTEN CONSTITUTION SUCH AS WE HAVE PERMITS THE COURTS TO MAINTAIN A BALANCE BETWEEN THE PUBLIC RIGHTS, I.E. GOVERNMENT, AND THE RIGHTS OF THE INDIVIDUAL, ALL IN THE CONTEXT OF THE TIMES. BY RELYING UPON IT WE AVOID RIGIDITY BUT ENJOY IN THE MOST COMPREHENSIVE WAY THE WHOLE FIELD OF HUMAN RIGHTS, AND ARE ENABLED TO BROADEN THE SCOPE AND BOUNDS OF OUR FREEDOMS IN A CONTINUOUS DEVELOPMENT FROM TIME TO TIME AS OCCASION MAY REQUIRE. THE ENTRENCHED EXPRESSION OF RIGHTS MUST ON THE OTHER HAND BE CONSTRUED AS A CODE WHICH IS EXHAUSTIVE OF THE SUBJECT.

THIS LEADS TO A CONSIDERATION OF THE RELATIONSHIP BETWEEN THE CIVIL CODE AND THE COMMON LAW AND THEIR RESPECTIVE RELATIONSHIPS WITH CIVIL RIGHTS.



THE COMMON LAW EXTENDS TO THE INDIVIDUAL VIRTUALLY EVERY RIGHT, UNLESS IT HAS BEEN ABRIDGED BY LAW. UNDER THE CIVIL CODE SYSTEM THERE ARE NO INHERENT RIGHTS IN THE INDIVIDUAL UNLESS THEY ARE PRESCRIBED BY LAW. THE SYSTEMS THUS APPROACH RIGHTS AND DUTIES ON DIAMETRICALLY OPPOSED PATHS, ALTHOUGH THEY COULD REACH THE SAME DESTINATION. THE DIFFICULTY IS IN DEVELOPING ONE SYSTEM THAT WILL ADEQUATELY SERVE BOTH THE CIVIL CODE AND THE COMMON LAW IN THEIR SEPARATE PROVINCES. THE RESOLUTION OF THIS PROBLEM DOES INDICATE THE ADVANTAGES IN PERMITTING THE PROVINCES TO DEAL WITH THEIR PROPERTY AND CIVIL RIGHTS UNDER THEIR OWN SPECIAL SYSTEMS OF JURISPRUDENCE.

IT IS TO BE BORNE IN MIND THAT THE B.N.A. ACT GAVE TO THE PROVINCES EXCLUSIVE JURISDICTION OVER PROPERTY AND CIVIL RIGHTS IN THE PROVINCE (SECT. 92-13). ANY ENTRENCHMENT OF A BILL OF RIGHTS IN THE CANADIAN CONSTITUTION WOULD INEVITABLY TRESPASS ON AND DEROGATE FROM THIS AREA OF HERETOFORE EXCLUSIVE PROVINCIAL JURISDICTION.

THE POSITION OF ONTARIO HAS BEEN MOST POSITIVE IN THE DEVELOPMENT OF LAWS RESPECTING INDIVIDUAL AND CIVIL RIGHTS. WE HAVE NOT ONLY RETAINED THE TRADITIONAL LAWS WHICH HAVE FORMED THE FOUNDATION OF OUR SYSTEM BUT WE HAVE INTRODUCED NEW LAWS IN THE AREAS NOT ANTICIPATED BY THE COMMON LAW. ONTARIO THUS REPEATS IN THE REVISED STATUTES THE LANGUAGE OF MAGNA CARTA AS ULTIMATELY ENACTED IN THE REIGN OF EDWARD I (1272) WHEREIN WE FIND PRESERVED OUR RIGHT





TO DUE PROCESS OF LAW AND TRIAL BY JURY, BUT THE SAME VOLUMES OF STATUTES PRESCRIBE THE ONTARIO HUMAN RIGHTS CODE WHICH HAS BEEN RECOGNIZED AS ONE OF THE MOST EFFECTIVE AND ENFORCEABLE EXPRESSIONS OF THE LAW OF FREEDOM FROM DISCRIMINATION. THE POSITIVE APPROACH IS FURTHER DEMONSTRATED IN THE APPOINTMENT OF THE HONOURABLE J.C. McRUER TO ENQUIRE INTO AND REPORT UPON NOT ONLY A BILL OF RIGHTS FOR ONTARIO BUT ALSO THE DESIRABILITY FOR AN OMBUDSMAN AND MANY OTHER MATTERS RELATED TO CIVIL RIGHTS IN THIS PROVINCE.

THE EFFECTIVE APPROACH TAKEN BY THE GOVERNMENT OF ONTARIO IN THE PROTECTION OF CIVIL RIGHTS UNDER THE EXISTING SYSTEM IS DEMONSTRATED FURTHER IN THE REVIEW WHICH IS PRESENTLY MADE OF ALL LEGISLATION TO ENSURE DETAILED STUDY AND REVISION OF ANY PROVISIONS THAT AFFECT THE RIGHTS OF THE INDIVIDUAL.

A PROPOSED BILL OF RIGHTS MUST BE CONSIDERED IN THE LIGHT OF OUR SYSTEMS OF JURISPRUDENCE AND THE PRINCIPLES THAT HAVE BEEN DEMONSTRATED. IF AN ENTRENCHED BILL THEN SEEMS NECESSARY AND DESIRABLE THERE ARE SPECIFIC EFFECTS UPON ONTARIO, AND INDEED ALL PROVINCES, WHICH MUST BE CONSIDERED.

AN ENTRENCHED BILL OF RIGHTS SHOULD NOT BE CONSIDERED UNLESS THIS IS DONE AS AN INTEGRAL PART OF A COMPLETE CONSTITUTIONAL REVIEW. IF A BILL OF RIGHTS IS ENTRENCHED AT THE FEDERAL LEVEL THEN ANY ULTIMATE RE-DISTRIBUTION OF POWER WILL





HAVE TO BE MADE IN THE CONTEXT CREATED BY THE BILL OF RIGHTS.  
THE EXPRESSION OF THESE RIGHTS COULD THEREFORE HAVE A MATERIAL  
AND PERHAPS UNINTENTIONAL EFFECT UPON THE CONSTITUTIONAL REFORMS  
THAT MIGHT ULTIMATELY BE DESIRABLE. SINCE THE ENTRENCHMENT OF  
INDIVIDUAL RIGHTS ABOVE THE AUTHORITY OF PARLIAMENT HAS A  
MATERIAL EFFECT UPON POSSIBLE DISTRIBUTION OF POWER IN CONSTITUTIONAL  
REFORM, THE TWO STEPS SHOULD BE CONSIDERED TOGETHER.

WE MUST ALWAYS REMEMBER THAT OUR NATION IS FOUNDED UPON  
THE PARLIAMENTARY SYSTEM OF GOVERNMENT AND NOT THE REPUBLICAN SYSTEM  
OF GOVERNMENT. IN THE FORMER SYSTEM THE SUPREMACY OF PARLIAMENT  
HAS ALWAYS BEEN AN ESSENTIAL INGREDIENT, FOR IT HAS VESTED IN THE  
PEOPLE OF THE NATION, THROUGH THEIR ELECTED REPRESENTATIVES, THEIR  
ULTIMATE POWER OVER THEIR RIGHTS AND FREEDOMS. THIS IS A  
FUNDAMENTAL CONCEPT OF DEMOCRACY WITH WHICH WE SHOULD NOT INTERFERE  
EXCEPT IN THE REVEALING LIGHT OF FULL AND COMPLETE DISCUSSION.

WE HAVE ALL RECOGNIZED THE ABSOLUTE NECESSITY OF  
DEVELOPING A MECHANISM WHICH WILL PROVIDE AN EQUAL OPPORTUNITY TO  
ALL FOR THE FRANK AND CONSTRUCTIVE DIALOGUE THAT WILL LEAD TO THE  
CONSTITUTIONAL REFORM NECESSARY FOR CANADA'S CONTINUING MATURITY  
IN ITS SECOND HUNDRED YEARS. THE SOUL-SEARCHING QUESTION OF AN  
ENTRENCHED BILL OF RIGHTS IS ONE OF THE MOST FUNDAMENTAL MATTERS  
WHICH MAY BE SERVED TO THE GREATER ADVANTAGE OF CANADA WITHIN THE  
PERIMETERS OF THE DIALOGUE TO WHICH I HAVE REFERRED AND WE LOOK  
FORWARD TO PURSUING A BILL OF RIGHTS BY SUCH A PROCESS.

IF ANY BILL OF RIGHTS, PROVINCIAL OR FEDERAL, IS TO BE



EFFECTIVE IT MUST BE MORE THAN A DECLARATORY STATUTE DESIGNED TO ASSIST IN THE INTERPRETATION OF EXISTING RIGHTS. SUCH A BILL WOULD THEN HAVE TO BE SPECIFIC AND DETAILED WITH COMPLETE DEFINITIONS OF THE RIGHTS PROTECTED. ONCE SO DEFINED, THE RIGHTS WOULD NECESSARILY DEROGATE FROM POWERS AND THE LATTER WOULD ULTIMATELY BE INTERPRETED BY THE COURTS IN THE LIGHT OF THE FORMER, THE COURTS WOULD THEN IN EFFECT BE DISTRIBUTING THE VB [ POWERS CONFERRED BY THE CONSTITUTION JUST AS SOME PEOPLE ALLEGE HAS BEEN DONE BY THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL IN THE PAST.

IN CONSIDERING A BILL OF RIGHTS IT MIGHT THEREFORE BE SUBMITTED THAT

- (A) SUCH A BILL SHOULD BE CONSIDERED IN THE LIGHT OF CONSTITUTIONAL REFORM GENERALLY.
- (B) SUCH A BILL SHOULD BE DEALT WITH IN THE LIGHT OF PROVINCIAL SITUATIONS WITH CONSIDERATION FOR EXISTING POWERS.
- (C) THE DECLARATORY OR OTHER NATURE OF SUCH A BILL BE REVIEWED IN THE CONTEXT OF THE EXISTING CONSTITUTION AND THE IMPORTANT RELATIONSHIP BETWEEN A BILL OF RIGHTS AND A CONSTITUTION, AND
- (D) IN THE CASE OF ONTARIO, THE GOVERNMENT MIGHT AWAIT THE McRUER REPORT WHICH SHOULD REFLECT THE VERY MANY SUBMISSIONS RECEIVED FROM PEOPLE AND ORGANIZATIONS THROUGHOUT ONTARIO.





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Mr. Prime Minister:

It has been said - and will be said very often during this Conference - that this meeting is witness to a most fateful moment in Canadian federal history.

We should not be unmindful of our history. An appreciation of the way we have come will help us better to understand the realities of the present, and the opportunities of the future.

It is never easy for language, racial and religious differences, as well as historic rivalries, to find a common political accommodation. French and English, Catholic and Protestant - under the best of conditions - would never have an easy time founding a common political society.

The history of Canada is, in large part, the history of the continuing search for political forms and personal attitudes that would neutralize suspicions and fears, and permit the founding and development of a modern state.

I would point out, Mr. Prime Minister, that the history of New Brunswick has been a miniature of that Canadian experience. We believe that from our New Brunswick history there are positive lessons to be learned.





In the struggle to "come of age", Canada has faced additional difficulties - regional disparities; colonial 'apron strings'; perhaps above all, the massive power of the United States, making it difficult for Canada to find its own place in the sun.

Our federal system, as someone said recently, emerged "under the zodiac of difficulty".

And how shall we judge the result?

The history of our first 100 years offers impressive evidence of the social durability, the political vigour, and the constitutional viability of Canadian federalism. For a century we have had an essentially successful experience of cultural co-existence in the form of a federal union.

It is perhaps appropriate that we should now 'take stock' of our nationhood, and look with 'post-Expo eyes' at the new Canada of the second century.

If we are really going to "see it the way it is", a number of perspectives are essential.

First, we need the viewpoint of humility!  
Whatever our problems - whether we are French-speaking or



English-speaking - we are very lucky indeed. Canada has advantages and possibilities almost ~~without parallel~~ in the modern world. Let us approach our problems and stresses with a sense of proportion.

Secondly, we need to recognize that today all societies are restive. All are assessing their values, their goals and their standards. Much of traditional nationalism has become sterile in our world of global interdependence. The rush of technological advance, the forces of social change, confront all societies with the need for renewed forms and goals; for responses that are appropriate to new situations. We need to remember, therefore, that while there is much that we can begin to do here, there is equally much that lies beyond the scope of constitutions and political power.

A third perspective, I would suggest, is to recognize that the constitution of Canada, as constitutions go, has been a very considerable success. Over the years we have been able to achieve wide-ranging administrative cooperation between federal and provincial governments. In times of national peril, it has been possible for the central government to exercise strong and effective leadership.





Yet, it also remains a fact that our constitution, as interpreted judicially, tends to favor provincial power, giving us one of the more de-centralized confederations in modern world.

To do justice, then, to the tasks of this Conference we require sound perspectives, and an awareness of the solid accomplishments of our federal system. Perhaps I should add, Mr. Prime Minister, that I am confident that the Canadian people generally will not surrender either to the folly of apathy, or to the equally destructive folly of those who ask us to regress from nationhood to a "common muddle" (not common market!) of co-existence!

11

Since this Conference was first proposed by you, Mr. Prime Minister, the Royal Commission on Bilingualism and Biculturalism has published Volume One of its final Report. The federal government took the view that the recommendations contained in that Volume had a direct bearing on the issues to be discussed at this Conference.

The Government of New Brunswick fully understands - and agrees with - the weight given by the Government of Canada to that Report's proposals.



I wish at this time, therefore, to deal specifically with the New Brunswick response to the recommendations of Volume One.

MY COLLEAGUES AND I OF THE GOVERNMENT OF NEW BRUNSWICK ARE IN FULL AGREEMENT WITH THE PRINCIPLE RECOMMENDATION OF CONCERN TO US, NAMELY:- THAT THE PROVINCE OF NEW BRUNSWICK SHALL OFFICIALLY AND PRACTICALLY BECOME A PROVINCE OF TWO OFFICIAL LANGUAGES - ENGLISH AND FRENCH; AND THAT THIS WILL BE IN THE CONTEXT OF FEDERAL INITIATIVES TO ACHIEVE A NEW NATIONAL REGIME IN THIS REGARD.

I repeat:- we accept that principle.

We believe that it is in the national interest for New Brunswick to share in revitalizing the Canadian spirit and Canadian unity, through the adoption of this basic concept. We also believe that it is in our own provincial interest - as a matter of equity - for us to adopt this principle at this time.

This policy requires (in the words of the Royal Commission Report) that the "principle public and private institutions must provide service in two languages to citizens, the vast majority of whom may very well be unilingual ... What we are aiming for, then, is the





equal partnership of all who speak either language and participate in either culture."

We recognize that the full practical operation of such a regime must apply to the Legislature; the courts; the Provincial government and its administration (departments and agencies); the school system; and to municipal administration as well.

In recent years, that is precisely the direction in which we have been moving.

Both French and English languages have been used for many years in the business of the Legislative Assembly. We have instituted the services of a Translation Bureau in the Provincial Government. This month we will inaugurate a simultaneous translation service for our Legislature, and for meetings with delegations and other citizen or committee groups.

By means of an important amendment to the Evidence Act, we have effected a major improvement in language-rights in our court proceedings.

Much has also been done in the field of education. As you may know, we have launched a major effort to strengthen



all education services in New Brunswick. As part of this over-all policy, a French-language university has been created at Moncton. We are developing related French-language training institutions for teachers, nurses and various technical professions.

These things we have done. We are well aware that much remains to be done.

The essential thing is that we are now prepared to adopt such a regime officially, in partnership with new federal policies in this regard.

It would be a great disservice for me to pretend that full implementation can be achieved (simply and immediately). The Royal Commission Report properly points out that it is not to be expected that we could "establish such a system overnight". Research and planning will be required; services will have to be augmented or new ones developed. The administrative arrangements and economic costs must be determined by the Government, and by related agencies and municipal bodies that might be affected.

But such a realistic course does not mean delay.





I am confident that the people of New Brunswick want to move forward soundly - vigorously - and together. Already, in the education field, some of our leading school districts, where the language of the majority is English, are showing realistic concern for French-language students in their planning of school programs. I am quite certain that this suggests the positive mood of our people, both French-speaking and English-speaking.

So we in New Brunswick will move forward in partnership with the Government of Canada and with the other provinces. We believe that this is a matter which is fundamental to our Canadianism. We believe that the aspirations of neither French-speaking nor English-speaking Canadians will be met if we build ghettos. "Equal-but-Separate" is a concept that would destroy our federalism and diminish both cultural groups. A Canada that is nothing but a "common market" is simply not Canada! Therefore, we must give Canada-wide expression the aspirations of our two principal language communities, and New Brunswick will work whole-heartedly to help achieve this.

So I am gratified by your statement, Mr. Prime Minister. I am gratified, too, by the responses of other provinces, particularly the Province of Ontario.



I am sure that all the initiatives, by all provinces, will lead to a more adequate and creative expression of Canada's basic cultural and linguistic duality. I am sure also that ample scope will be given - perhaps more than ever before - for the contributions of those other cultural and linguistic groups that are so vigorous a part of the Canadian community.

In pursuing our policy of bilingualization, the Government of New Brunswick, at the forthcoming session of the Legislature, will propose a resolution adopting such a program in principle; and recommending its rapid implementation by appropriate legislation.

We will also make every effort to pursue the suggestion of the Royal Commission that certain of our "French-language institutions could extend their services beyond the boundaries of the province". We are willing to help make the services of such institutions as the Université de Moncton; the new French-language Teachers' College; the Memramcook Institute; as well as services of Departments of Government available to our neighbour provinces in the Maritimes.





The New Brunswick Government is also ready and anxious to work in every way possible with the Provinces of Quebec and Ontario so that together we may develop the services, facilities and materials (e.g. textbooks, audio-visuals) that will afford a great equality of opportunity to persons of either cultural group.

111

I come now to the proposal for a Bill of Rights. We were very pleased to receive from the federal government the analysis of the problems surrounding the principles, as well as the form, of a modern Canadian Charter for Human Rights. This useful document requires careful study by future committee and plenary meetings devoted to constitutional reform.

In principle, the Government of New Brunswick is fully in accord with the general proposal of a Bill of Rights that would be incorporated in the B.N.A. Act or any successor document.

In a time when the operations of government have grown so greatly in scale and complexity, we ought to define those rights that are basic to free humanity and effective citizenship.

Such rights of the citizen ought then to be enshrined in the constitution of Canada, with appropriate application to both federal and provincial levels of jurisdiction.



In our judgment, it is not enough to see this as a responsibility of provincial constitutions. The rights of the citizen, conjoined with those rights of language and culture that are so important a theme of this Conference, reach to the core of our national purpose.

They are central to our national élan. They belong to us as Canadians, and ought to be fundamental to both jurisdictions in which Canadians live as members of a federal state - as citizens of Canada, and of a particular Canadian province.

A Bill of Rights, entrenched in the constitution, would spell out the essence of our national society - what it is, what it intends for its members; how it views the freedom and dignity of the citizen; and how it conserves and expresses the linguistic duality that is basic to our Canadian nationhood.

Such a definition of the rights of Canadians would make it clear that all governments in Canada are partners in the preservation and defence of our human rights. It would make it clear that all governments are equally committed to give effect to those rights of language and culture that are a unique feature of Canadian society.





The defence of the rights of Anglophones or Francophones is not the lonely burden of one or two governments. It is the duty and opportunity of all.

In the vigorous and sensitive acceptance of such responsibility, all governments will share in preserving what I have called "the integrity of our nation".

1V

I wish now to offer some brief remarks on the question of constitutional change.

I have already said that I believe that the B.N.A. Act, after 100 years of administration and interpretation, may be described as a considerable success.

But that does not mean that there is no room for deep study of certain of its significant features after a century of operation. There may be room for change where studies indicate a need for improvement, or for a fresh response to a new Canadian setting.

Indeed, it is perhaps time for an honest examination as to whether the forms and symbols of 1867 are appropriate to the life, and times, and mood of 1968.



We can surely all agree that the B.N.A. Act as a piece of prose, and as an exercise in symbolism, is deficient to the point of calculated boredom. (Perhaps it is a revelation of the Canadian character!)

But there is little realism, in my opinion, to a discussion of constitutional revision or re-writing, without recognizing that there are many issues of great complexity that will require examination. Let me just mention a few obvious ones:

- the "patriation" of the Constitution and a process of amendment;
- the entrenched provisions problem -  
This affects the amending process, for some amendments will require unanimity, others not. The Bill of Rights problem belongs in part to this issue of entrenched provisions, both as to substance and as to methods of amendment;
- the reform of existing institutions such as the Senate and possibly the Supreme Court of Canada.





I think it is public knowledge that little study in depth has been done on these subjects by governments, or for that matter, by scholars. I respect the work evidently done by the Government of Canada and by the Governments of Ontario and Quebec. But I am sure they would be the first to admit how much essential and difficult work has yet to be undertaken.

Therefore we must approach the problem of constitutional reform with a deep sense of responsibility.

I propose, therefore, that all governments share in a program of common study of constitutional matters of all kinds.

I believe such an approach is necessary to provide us with a common body of sound work, developed by the best officials and students we can find to represent us. Thereby we will develop at the technical level at least, the maximum possible consensus with respect to the need for change and the details of recommended changes, if any.

For these reasons, I should like to propose:-

- First, that this Conference establish a joint federal-provincial study committee, with instructions to proceed to examine all of the technical implications of the bilingualism and bicultural recommendations;

(5)

Johnson had over 100,000 in the place he was at  
Transition sign it made in St. Paul, Minn

Room - 6 large crystal chandeliers

- gold paint
- red covers on windows (10 windows) - sculpted valances
- wall to wall white & brown flecked rug
- 2 ornate doors
- marble top - blue marble - w. rafters & painted gold & blue & red

an entrenched Bill of Rights; and to study as well any other problems of constitutional change put forward today or at any future meetings by any of the eleven governments concerned;

- Second, that such a Committee would meet very frequently, as a standing body having technical representatives who were expert in:-

constitutional law

federal-provincial relations

finance and budgetary matters

- Third, that from time to time, the committee would report to Conferences of leaders of the federal and provincial governments.

If we could agree on some such mechanism, it would be simple to have representatives at the technical level meet to form such a committee within the immediate future, and the present conference could give it priority instructions concerning the subjects to be studied.

Only by some such device is it likely that we can do justice to the pressures for constitutional reform, while at the same time avoiding an injustice to those who properly see values in what we have had to guide us for 100 years.

i. defenders of 71 in Newfield will be } part of Can

He failed to understand Que's proposals =

Is govt of Que now asking for it if Que begins  
to pass legislation touching 71 laws in other provs?

- should 71 laws throughout Can be vote for infra in Que & Leges?

Are ~~there~~ 10 or equal provs

If they go 71 laws in them their rts,

Then why should Que be special status?

I would feel as 71 laws do about laws if I were in their place

"How can any Can who isn't a bigot deny them their rts to their laws  
but that being done to what's all this about Que being  
their heartland?"

In such case, Que should be no more, no less rts than any other prov.

"If 71 minority in other provs to be connection in Que,  
is any minority in Que to be connection in any prov?"

"Are <sup>75</sup> 20 MP's from Que dismissed, ~~not~~ included?" Don't they rep Que

"Anything that reduces Olt's strength, strikes at us - ("of equality")

"We are absolutely opp'd to anything that weakens Olt"

May be to be some realignment of f's

That's why Mr. Johnson's proposal wrong

Refer to p. 16 of Pearson's statement

How any Can who loves Can. and wants best important as say that  
baffles me

Believes people of Can and overwhelmingly reject it

Q's Manning's statement p. 17 - "abolition of crown, conversion of Can to republic"

- ~~the~~ guess -  $\frac{1}{2}$  m. Newfielders won't be attracted to these

- if Newfield let to choose between crown, we be a sore choice

"let's hear no more childish & foolish talk like that"

There are millions of Can's - "throng of Eng" - "not going  
to stand for it"

Accepts Charter of Human Rts gladly & unconditionally

Can't be  $\frac{1}{2}$  of people unhappy, feeling frustrated

Future of Can doesn't rest solely on settling Ling's rts prob

I'd be surprised if all provinces didn't support me

Chief worry, even in Que, is jobs, wages

Need more & better equality



V

At this time, I wish to support Premier Smith's initiative in bringing the issue of regional disparities before this Conference. It is an issue that must be part of any realistic discussion of the forms of our federalism, and of the aspirations and social goals of Canadians.

Our federalism is intended to give full play to the energies and aspirations of our people. In Canada at this time, we believe that this requires us to give national definition of Canada's basic cultural partnership.

But our federalism must also achieve conditions of relative equality of opportunity and services among the provinces and several regions of Canada, for the sake of all citizens as Canadians. Otherwise Canada's human-cultural objectives will fail because they are not rooted in socio-economic substance.

Let us not confuse the issues that are before us here. I believe that we can together meet the legitimate objectives of French-speaking Canadians, as well as English-speaking Canadians, by adopting the dual language regime proposed by the Royal Commission in Volume One, and by action with respect to an entrenched Bill of Rights.

little effect in certain regions - may even provide opp'n  
what is required is a voluntary appreciation by Eng Govs  
of intrinsic worth of Fr - not on basis of constitution  
but on basis of enjoyment of what to communicate  
Oller challenges assumption that legislative approach is best  
Oller prepared to extend efforts in relation to Fr  
- not in isolated district but throughout prov.  
May not be acceptable to Fr Govs - seems autopian  
but desire to do so is just today than ever  
+ is better here than B.B. - legislative approach  
B + B. assumption that lang is proper subject for constitution  
is open to argument question  
e.g. as with relig (not be wrong to include relig in constitution)  
- is a personal matter  
Supra of race + state is as valid as supra of relig + state  
Bill of Rts subject subject to q. re jurisdiction aspects  
Before approving any constt chgs on lang etc,  
shd know what else one wants  
- special status threatens fedl gov't  
"This Conf might be a Constt Munich"  
- concessions made may precipitate further dems  
"Att'n not ready to concur in any constt chgs re its  
without further info re one's position dems"

Newfield - Quotes p. 4 of Pearson's statement on Federalism for the Future  
- "This must wound our sense of justice"  
Quotes p. 22 - re Fedl lang provisions  
p. 22<sup>-23</sup> Q. from Royal CB  
Newfield has < 1% Fr  
Cal - halbrador City = 30% Fr  
School there is fully bilingual - Fr taught in Fr  
Magistrate's Ct has interpreter + looking for bilingual  
bilingual off. as in bilingual  
Radio is bilingual - TV str is Eng + Fr  
Germany to be begin exact law  
get prov for Fr in Newfield same as for Eng in Que.  
to make Fr co-equal as Eng in legis  
- only 6 media are bilingual  
to grant status in Eng Fr + Eng.  
to encourage Fr-speak Newfielders to use their lang in etc

Then we can more clearly see the issue of the effective total functioning of our federalism; and in that context discuss divisions of powers and other broad constitutional issues.

In the context of that second issue, it is our judgment that the wholesale stripping of powers from the central government is undesirable. We must be very clear about this because, as someone has said, we could well reach the point when the cumulative effect of eroding federal powers would be "to transform Canada from a nation into a cobweb".

I am all for strengthening provincial governments so that they will have the powers and resources needed to carry out their critical responsibilities under the constitution, including educational and cultural responsibilities. I am anxious to find better ways and forms of joint federal-provincial consultation, program planning and administration. But given the nature of Canada's geography, and the widely differing stages of economic development in this country, I am convinced that uniformly strong provincial governments are possible only when we maintain the forces of national cohesion through strong central government.



Then yr. Sark will allow 71 lang instruction in school where relevant  
- e.g. - Geography, Education  
will sat. Biling. College in Lymington  
(Eng. studs will hv to take 40% of classes in 71  
71 -- -- -- -- -- in Eng)  
This done to reassure Que is sg is being done  
to preserve 71 throughout Can.

Bill of Rts - not overly impressed w. need  
but not opp'd to princ. + idea, w. some qualifers  
- OK for fund'l rts (democ rts)  
but not for addit'l rts \$ → lv to Parl + Legis  
- think of USA where crime on inc  
- law + order may req. curtailment of individ rts

Jen - how come Sark has only 6 Sems - N.S. 10?  
Dab. on mult. unity has been going on for long  
+ - he had wealthy Qualifiers - Sark engineering about  
transferring their Invest'ts \$ out of Que

Sark prepared to pay price for mult. unity  
but compromise in 2-way street

Alta

Need strong field of strong pro & con in own jurisdictions  
Need 2 sides of each coin disparities + stimulation of local econ. growth  
Concentrate here on the 71 Cons

Difficult to get action : { ① magnitude of prob + differs across city  
② wide range of differs in conflicting attitudes  
of Gov. + publ on these issues  
③ emotional elements involved

Does not accept view that Confederation was union of 2 races, cults, - long  
little disagree it w. objectives of Bill of Rts, mildly lang rts

Method - open to serious question as to practicability - possibility  
- Alta believes possibility is not yet (not likely to get agreement  
on passing BNA in near future) - e.g. 1950 - 7-7-7

Agrees to participation - but it failed  
: won't expect agreement on Bill of Rts

Even if unanimity obtained, doubt its wisdom  
- waiting lang rts into constitution doesn't mean hv to

I want full linguistic and cultural equity for both the English-speaking and French-speaking people of New Brunswick. But I am just as determined to achieve for our people economic equity; decent jobs, adequate housing, a proper range and quality of public services. In other words, I want for the people of New Brunswick, full participation in the opportunities and possibilities of Canadian society. And I say strongly that our Government will settle for nothing less than that.

We believe, therefore, that if we are to realize the full potential of our federalism, we must continue to ensure strength at the centre.

It is in the preservation of the fact of "Canada" that we have the surest hope of achieving both the aspirations of our two cultures, and of our several economic regions.

Province, region, cultures and nation must be brought along together as we move into the second century of our Confederation.



Order of speakers  
n.b.m. - Carson

(1)

Pro-Bill of Rts

Cam.  
N.S.  
N.B.  
Man  
P.E.I.  
Sask?  
Newfld

Ont

Que

N.S.

N.B.

Man

B.C.

P.E.I.

Sask

Alta

Newfld

Man - proposed to wait in preparing Can. Charter of Human Rts,  
monthly legislative rts

- Man has ~~other~~ cts in bill that go further than proposed bill  
e.g. re ~~the~~ employment

- no decisions yet re B. & B kept

- some already done - e.g. St. Boniface has being negotiates + county cts

Edmonton - 7% O.K. for public schools

Priority should be given to getting the. Council + procedure, e.g. 1-7-7  
illegitimate to ~~not~~ negotiate with distribution of these resources

Genuine consultation

Book - for publication

- feels no need to do smaller but does not need it as a document

- favour strong central govt - for equality - will not give willingly  
to cts that demand central govt

- if Que given everything asks for, powers of central govt as  
imposed that will be 2 nations in fact

- Can. without Que is unthinkable

- my prev. joining increasingly concerned about some ideas of Que -  
spelling out - fact will impact fed govt

- opp. to special concessions

- prepared to support any reasonable chgs. e.g. lang. cts. extension  
but problems in Sask - 7% Que - 7% Sask - 4% Fe.

- chgs already - 1 hr of Fr/dy in schools

Govt. accepts in principle most of A.B. recommendations

e.g. laws that should be under that in constitution

STATEMENT OF THE HONOURABLE WALTER WEIR, PREMIER OF MANITOBA,  
AT THE FEDERAL-PROVINCIAL CONSTITUTIONAL CONFERENCE, OTTAWA,  
FEBRUARY 5, 1968.

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Mr. Chairman:

My delegation recognizes the great importance of this conference affecting as it does the whole structure of our nation including the possible amendment of our constitution.

I should like to make clear that Manitoba, in taking part in this conference and in the subsequent studies which will undoubtedly be put in hand, will want to ensure that the essential powers of the Parliament and of the Government of Canada are in no way diminished. Our province holds that the retention and the clarification of these essential powers is a prime factor in preserving not only the political and legal rights of Canadians but also their economic and linguistic rights. In short we believe firmly in the virtues of the Canadian federal system as they have developed during the first century of our Confederation. We look forward to continuing this system into Canada's second century as a united nation.

Our province is a successful example of multi-cultural harmony. It is an accomplishment of major significance in the context of this conference. We have managed the development of a community which is united in its purposes although continuing to express the diversity of many cultural backgrounds. Manitoba comes to a meeting like this with positive experience in respect of linguistic and cultural rights.

The Canadian Bill of Rights enacted by the Parliament of Canada in 1960 recognizes and declares the existence in Canada of certain fundamental rights and freedoms. All these rights and freedoms now exist and have always existed in the province of Manitoba, not because of abstract principles enshrined in a constitutional document, but because they are deeply embedded in the law which we have inherited and developed, and are strongly supported by the freedom loving peoples who have made Manitoba their home.





Nonetheless Manitoba is prepared, if this Conference thinks it appropriate in the national interest to participate in devising a Canadian Charter of Human Rights. This might include clauses covering political and legal rights as now generally included in the Canadian Bill of Rights adopted in 1960. The proposed Charter would presumably also include linguistic rights and would be effective both at the federal and provincial levels of government.

In passing I should like to mention that statutes of the Legislature of Manitoba have extended to the citizens of our province, rights and freedoms not mentioned in the existing Canadian Bill of Rights. I need only refer to The Employment Standards Act, The Equal Pay Act, The Fair Accommodation Practices Act, and The Fair Employment Practices Act.

Our understanding is that a Canadian Charter of Human Rights or Bill of Rights comprehending a definition of the language rights of English-speaking and French-speaking Canadians would be entrenched in the constitution of Canada where it would not be subject to repeal or amendment save with the consent of all the provinces.

It is not yet possible for us to have specific reactions to the various recommendations of Volume I of the report of the Royal Commission on Bilingualism and Biculturalism. We are giving careful attention to the fundamental principles outlined in the report, particularly those which were indicated as of possible application to Manitoba. We consider this a matter of first importance.

As I have indicated, Manitoba has had a wide experience as a multi-cultural society. In spite of some tensions and disagreements in the past, we have, I believe, learned some practical lessons which are of value to us in reviewing the recommendations of the royal commission report.

In practice we have found it advisable in the major French-speaking population centres to ensure bilingual qualifications in a number of appointments to the public service. For example, the City of St. Boniface has long had a bilingual magistracy and county court. In addition of course most of Manitoba's French-speaking population is served by French language radio and television.







More recently Manitoba took an effective step to recognize the position of the French language in our school system. An amendment to The Public Schools Act unanimously adopted at the last session of the Manitoba Legislative Assembly permits the use of the French language as a language of instruction in the schools of the province: this alters the unilingual practice in Manitoba which had been in effect for over half a century. I mention these matters to indicate that long before the establishment of the Royal Commission on Bilingualism and Biculturalism - indeed before the current public debate on the subject at the national level - we in Manitoba had given practical and effective recognition in some of the fields now specified in the Royal Commission report.

The government of Manitoba regrets that Canada must still have recourse to the Parliament of the United Kingdom in order to obtain amendments to our written constitution, The British North America Act. It is our wish that priority be now given to agreeing on a domestic amending procedure which will enable the constitution of Canada to be amended in Canada by Canadians. In 1964 the government of Manitoba indicated that it supported the Fulton-Favreau formula for amending the Canadian constitution. Manitoba is still prepared to accept this formula, or some other agreed amending formula, to achieve this fundamental goal at the earliest practicable time.

A generally acceptable amending procedure will doubtless require that amendment of certain important provisions of the Canadian constitution shall only be possible if all the provinces consent. This requirement of unanimous consent could prove frustrating to a province or a group of provinces desiring a change if that desire is not shared by all the provinces.

Manitoba is therefore anxious that any amending formula should contain a provision permitting inter delegation of legislative power between Canada and the provinces. No such provision exists under the present constitution and experience has shown this to be a deficiency which handicaps the provinces in a number of areas. Marketing of natural products and control of inter-provincial water resources are but two examples of this.



Aside from the purely mechanical process of amending the constitution, there is the far more difficult matter of adapting our constitution to the broad economic and social requirements of Canada's second century. In the past, the two levels of government in Canada have generally been successful in developing arrangements to make the constitution function in changing circumstances. Governmental actions and responsibilities, however, have grown at such a rapid pace that we have not always developed workable arrangements fast enough to match this advance. Thus tensions have been created at those points where the B. N. A. Act does not offer precise guidelines or where the division of responsibilities and tax resources has not proved adequate to the expanding needs of each level of government.

This inadequacy in the B. N. A. Act is not surprising since many of the present responsibilities of governments were not considered important in the 1860's. Manitoba believes that our past success was due primarily to the flexibility inherent in our institutions and in the joint relationships we established. We are convinced it would be unwise to introduce rigidity into the distribution of responsibilities and tax resources between the two levels of government. Rather we should work together to develop methods which would assure each level of government adequate means to fulfill its constitutional responsibilities.

A sound basis for federal and provincial collaboration would be where levels of government came together to determine the essential needs of the country appropriate to the particular times. From that determination, feasible and mutually acceptable measures could be developed to meet the needs of the Canadian people. A reallocation of constitutional responsibilities and tax resources will still prove unworkable unless we develop effective mechanisms for examining our continuing problems.

In recent years most governments in Canada have come to appreciate that effective consultation is a primary requirement of Canadian federalism. The joint shared-cost programs illustrate





to what extent the federal government is now involved in responsibilities assigned to the provinces by the British North America Act - natural resources, social welfare, highway construction, higher education and so on. While these programs have not involved the formal transfer of constitutional responsibility, in time, provincial initiative in these fields has been curtailed.

Too often the federal government has unilaterally stimulated programming which is the constitutional responsibility of the provinces. Manitoba has stated its objections to these actions on many occasions. Before measures of mutual interest are initiated, Manitoba believes that certain conditions of co-operation must be met. Genuine prior consultation between the federal and provincial governments must be reflected in decision-making compatible with constitutional responsibilities. The success of a real federal-provincial partnership must be measured in terms of the effectiveness of consultation on policy as well as on execution.

In 1964 the "opting out" concept was introduced by the federal government whereby provinces could contract out of established shared-cost programs and instead receive equivalent fiscal compensation. Manitoba has viewed this development with mixed feelings. We have appreciated the measure of independence provided to the provinces for these programs. We have also recognized that there was a potential threat to the federal government's capacity to develop minimum standards of service across the country and to our system of fiscal and administrative co-operation.

Severe inter-regional disparities of income and other basic factors of life remain, in our view, a most serious divisive force in Confederation. The problem is rendered more acute by the fact that the disparities are not diminishing as fast as the nation requires. We must reappraise our past efforts and we must re-examine the causes and the nature of the problem if we are to give reality and meaning to the ideal of equality of opportunity for every Canadian.





We have heard from the spokesmen of the Atlantic Provinces and Quebec that this problem is most acute in their areas. Our concern is first with the divisive effect of inter-regional inequalities and, second, with the direct implications of this problem in Manitoba.

We support the view that the federal government must develop policies favourable to regional growth. Too often the national government's responsibility has been interpreted to mean that measures which best serve the country will be in the interest of all the regions. This global approach to national responsibilities is too simplified. Federal policies must be appropriate to the individual regions.

Finally, we believe that this serious problem of regional inequality can be demonstrated to be at the root of many of the forces which divide Canada today.

Long range constitutional reform should not serve as an excuse for failing to take effective action beginning at once. It is our hope that this conference will address itself on a high priority basis to a determination of the best ways to resolve the problem, its causes, its effects, and to seek its solutions.

We have been speaking today of the Constitution. But are we really not contemplating the character of our country in its second century and the quality of life we wish to provide for this and succeeding generations.

When we speak of the Constitution and the changes that are needed to adapt it to the needs of Canada in its second century we should not allow a concern for the instruments themselves to obscure the purpose to which their use is directed.

To the extent that what we have done in the past has failed us then we must search for those positive changes which will lead us to the goals we are seeking. Change for its own sake is not enough. But where change is necessary for the continued progress to the greater Canada which meets the ideals and ambitions of all Canadians, then Manitoba stands ready to play a positive role in this search. Indeed we in Manitoba believe we have many positive contributions to make and not the least of them arises from the



nature of our Western society.

Manitoba pledges itself to play its full role in the co-operative spirit which has been engendered here - and in the common endeavour of all of us to achieve a stronger and more united Canada.





*Our motto - parva sub ingente*

*Yes - pro - lang etc*

*1st pt. 2nd pt.*

Government  
Publications

OPENING STATEMENT OF  
HONOURABLE ALEXANDER B. CAMPBELL  
PREMIER OF PRINCE EDWARD ISLAND

*Feb 5, 68*

It is indeed fitting that, as our first hundred years of union end and our second century of common life begins, we Canadians should come together in a spirit of fellowship to seek a firmer foundation for the liberty, equality and fraternity of our citizens than has heretofore existed in this country.

Of course, Canadians already have the protection of two Bills of Rights: the traditional charter of liberties deriving from Magna Carta, the Petition of Right, and the Bill of Rights of 1689; and a Canadian Bill of Rights enacted by Parliament in 1960. All of these protective acts, however, are only ordinary statutes, amendable by the usual legislative process, and not, therefore, abiding guarantees of liberty. Moreover, the Canadian Bill of Rights is explicitly restricted in its application to Acts of the Parliament of Canada and to "matters coming within the legislative authority of the Parliament of Canada."





As the head of a Provincial Government I would assert that there is no longer any reason, if ever there was one, why the Provinces should be excluded from the application of a Bill of Rights. Speaking for my own Province I may say that "we seek to oppress no one, and wish harm to no man," and we are prepared to enter into solemn public guarantees to that effect.

For this is not a matter of the re-allocation of legislative powers between Federal and Provincial Governments; it is rather an affair between all Governments, on the one hand, and the Canadian people, on the other. A Bill of Rights means that Governments in perpetuity cede certain of their powers -- powers which in this country they would be unlikely ever to employ in any event -- to the people, so that the people may forever be assured of a life of dignity and decency. This is indeed democracy, "government of the people, by the people, for the people". Much of the world regards liberty as a luxury which it cannot afford, but fortunately in Canada we regard liberty as the pearl beyond price for which we would sell all our other possessions. Liberty is only as much of a luxury as democracy itself.



Of course, the people may not always speak with a single voice. But here, again, is a need for a Bill of Rights. For democracy cannot mean the tyranny of the majority any more than it can mean the dictatorship of the few. The sacred right of dissent is embodied officially in such institutions as the office of Leader of the Opposition, but it is necessary also to guarantee unofficial expressions of the same spirit of free dissent. A vital democracy will protect its natural minorities even more than its majority group, for the majority can normally take care of itself.

This brings us to the crux of the problem in Canada today, the inadequate recognition which Federal and Provincial Governments alike have given to the legitimate aspirations of the French-speaking minority across this country. I take no position on whether the Federal Government's proposals respecting Bilingualism and Biculturalism should be incorporated in the same document as the Bill of Rights. But it is surely supremely appropriate that we should consider them at the same conference as problems of fundamental civil liberties, and that we should adopt them in the same spirit of preservation of democracy and indeed of Canada itself. Cultural

hang. it's  
not necessarily  
part of Bill  
of Rights





and linguistic inequality has in fact been the only serious blot on Canada's record as an enlightened libertarian nation, and the elimination of this inequality is therefore the most important libertarian problem facing us at this Conference. Speaking for my Province, I wholeheartedly endorse the Federal proposals and I pledge my support to their speedy implementation.

I believe it would be hard to overstate the importance of what we have come here to do. We may, perhaps, be looked on as the foster fathers of Confederation in undertaking to complete the work which the original Fathers began in Charlottetown in 1864. We have to add to the initial structure a superstructure more in conformity with the apparent needs of the country after a century of experience: the deepfelt desire of the people of Canada (and especially minority groups) for a constitutional guarantee of their liberties, and especially the profound yearning of French-speaking Canadians for a recognition of their rights to equality of status and of opportunity.



Beyond this, I cannot refrain from making a plea for what in the present context might perhaps most appropriately be called "regional minorities". The achievement of constitutional guarantees for the French-speaking minority and for all individual citizens, while rightly the principal business before this Conference, is far from the only important business before this country. Constitutional guarantees can provide at best only a negative or potential freedom, the freedom not to be discriminated against or unjustly interfered with. They must necessarily fall short of the positive freedom found in actually controlling the forces that shape our destiny, of being maîtres chez nous, as our French-speaking compatriots put it. This fuller degree of freedom can result only from the possession by regional minorities of the means to achieve equality of opportunity.

Let us take, for example, the right of every Canadian to the national services which the Federal Government provides -- this will be seen to be analogous to the principle of linguistic equality in Federal services recommended by the Royal Commission on Bilingualism and Biculturalism. In the areas of





transportation and communication the people of some regions not only have fewer natural advantages than others but often do not enjoy the same benefits which accrue to those in other regions. Perhaps railway services are allowed to deteriorate, even while air, highway and water transportation is inadequate. Television coverage may be substantially incomplete, but denied further development.

Even more important is the right to education, undoubtedly the most important economic right of our day. It is often said that Canadian industry is falling even further behind American industry because of the lower educational level of both management and labor in this country. It is less often said, but equally true, that, because of regional disparities, education in many parts of this country has not only fallen behind that in other areas, but fallen below a satisfactory level, and as a result equal opportunity tends to be an unfulfilled right.

Economic rights, even if they are outside the main business of the agenda as inappropriate for constitutional entrenchment, must not be forgotten. By all means let us have guarantees of linguistic equality and of individual freedom. But let us also have the economic means for achieving equality of opportunity.



Mr. Chairman - We in Prince Edward Island, like many Canadians living elsewhere, offer this Conference and the future of our country more than our mere words here and therefore,

While we endorse the underlying principles of the "B & B" recommendations as essential for a more united and better Canada, we announce our intentions to establish a cultural and educational centre for the Acadians of Prince Edward Island at Abraham's Village, where The Honourable Louis Robichaud will open a new consolidated school on the 16th of February of this year.

While the use of French has been limited within our Legislative Assembly, I propose to seek the adoption of a resolution by the Legislature formally recognizing both English and French as official languages in debates in our Legislature.

Prince Edward Island, as the Cradle of Confederation will play its part in maintaining Confederation. We have heretofore declared our belief that Canada must have a Strong Central Government,



with sufficient powers and resources to effectively address itself to the regional needs of the nation. Our provincial motto - Parva Sub Ingenti - the Small under the protection of the Great - is as appropriate to our circumstances today, as it was 100 years ago. We will therefore propose and support such measures as will enable us to achieve equality of opportunity, and we will oppose and resist such measures as would impair and diminish the ability of the Province to speak and act for each of its residents.







The Honourable Louis J. Robichaud, P.C., Q.C.  
Premier of New Brunswick  
Constitutional Conference - Ottawa

Wednesday morning, February 7, 1968

STATEMENT ON REGIONAL DISPARITIES

In my opening statement, I touched upon the problem of regional disparities. In this Conference and at the Confederation of Tomorrow Conference, a constant theme has been that we cannot achieve a sound federalism as long as widespread disparities exist from one region of Canada to another.

Our Basic Position

Earlier, I expressed concern that the stripping of powers from the Federal Government would erode its ability to deal with such economic problems as regional disparities. I suggested that, apart from any constitutional change, we must seek better ways of joint action, particularly in the field of economic development.

This is not a new position for New Brunswick to take, Mr. Chairman. Last November at the Finance Ministers' Conference we argued for a more selective kind of fiscal policy, one which would recognize that the problems of inflation do not fall equally across the country. At the same time, we suggested that the time has come for the Federal Government to devise, in consultation with the provinces, a rational economic policy for the Atlantic Provinces.



In this, we subscribe fully to the views expressed in the recent First Annual Review of the Atlantic Provinces Economic Council. We believe that the efforts of many federal agencies in the region are contradictory and self-defeating. Federal and provincial efforts often work at cross purposes.

#### Present Problems

For example, we mentioned the designated area incentive program, pointing out that the effect of the program was much more beneficial in Ontario than it is in the Atlantic Provinces. Indeed, the program retards economic development by encouraging industries to locate away from growth centers or by attracting industries whose only interest is in a temporary relocation in order to benefit from financial incentives.

There are many other examples, Mr. Chairman, where federal policies and practices defeat developmental efforts -- the whole field of transportation, the cumbersome approval processes in ARDA, ADA and ADB, the imposition through various agreements of a wage pattern which raises our costs to excessive levels. All of these have been mentioned in the past, and I have no intention of going into further detail here.





A New Approach to ADB

It is our belief that many of these problems can be solved and that the goal of eliminating regional disparities can be tackled quite aside from the constitutional issues. And we believe that the key to many of our problems lies in a broadening of the concept on which the Atlantic Development Board was created.

We have been very critical, Mr. Chairman, not of the Atlantic Development Board, but of the limitations placed upon the Board. We have always supported the concept of a regionally oriented agency, with special funds and special powers, to tackle the problems peculiar to the Atlantic Provinces. But we are now convinced that the scope of the Board's concern, its relationship with the Federal Government, and its general powers must be reconsidered.

A TRANSFORMED A.D.B.

1. The concerns of the Board should be broadened considerably.

- (a) It should be providing economic advice that will further joint federal-provincial development efforts.
- (b) It should be providing objective analysis of federal and provincial programs in much the same way as the Economic Council does for the whole country.



- (c) It should review the kinds of projects in which money is invested, perhaps to the extent of becoming involved in key individual enterprises.
- (d) It might adopt the external aid approach of providing technical assistance in fields where smaller governments are unable to attract or retain appropriate talents and expertise.
- (e) Finally, we tend to the view that such an expanded and strengthened ADB might well act as THE SOLE VEHICLE FOR ALL FEDERAL ECONOMIC DEVELOPMENT MONIES AS FAR AS THE REGION IS CONCERNED.

2. An agency of the kind we envisage would require much wider powers and a quite different relationship to the federal government than is now the case. It would mean abandoning the advisory role of the A.D.B. and replacing it with an active operating role. It would speak as an advocate of the Atlantic provinces, rather than as an arm or agency - and sometimes as an apologist - for the federal government. It would mean financial autonomy to the Board in the same manner as for the proposed Cape Breton Development Corporation.



3. Most important of all, it would mean providing the Board with sufficient loan and investment funds to do the job well and to do it quickly. You will recall that Prime Minister Robarts suggested in Toronto that perhaps a billion dollars should be set aside for the underdeveloped parts of Canada. If the gap is to be closed, these are the magnitudes we must consider.

As far as the Atlantic area is concerned, we must achieve improved instruments or mechanisms that will permit:

- (a) very large scale development investment
- (b) close coordination of federal-provincial and agency policies
- (c) sound joint planning and joint effort
- (d) incisive action

We believe that such an instrument can be devised within the present structure of constitutional roles and responsibilities.

We believe that it must be devised and made effectively operative if we are to deal seriously with the problem of regional disparities as it affects our provinces.

We believe that we should make it very clear at this time that the present "scatter-ation" of effort, using considerable federal funds, is possibly not really





achieving any closing of the socio-economic gap. We simply cannot accept the prospect that many thousands of our people will find themselves, ten or fifteen years from now, in a position of more acute hopelessness, because general Canadian development in that period has so far outpassed them as to leave them in a cul-de-sac from which there is really "no exit".

We just cannot accept that. And yet it may well happen, if we do not make every effort to devise policies and instruments that will make the story different.

We have offered simply one suggestion for tackling the problem - through a transformation of the roles and resources of the A.D.B. I would welcome comments and suggestions from the other provinces as well as the federal government on this proposal or any other.

I must say that I particularly welcome the suggestion made by the Prime Minister of Quebec in his Province's brief on the constitution - that is, that an "additional equalization payment be made to provinces whose per capita personal income falls short of the national average by 20% or more". (page 20)

This device could go far in accelerating the closing of the gap.



I realize that the present equalization arrangements have some time to run before re-negotiation. However, Premier Johnson's suggestion would not disturb these arrangements. It would be supplementary to them. If such a scheme has merit, therefore, we need not wait before implementing a program of "supplementary equalization".

I would now propose that the Quebec proposal in this regard be referred to the Tax Structure Committee, as a priority item, for consideration at the earliest possible moment.





INDICATORS OF REGIONAL DISPARITY  
Selected Series and Indicators

| Indicator  | N.B.  | Ont.  | Canada | Atlantic Prov. |
|--|-------|-------|--------|----------------|
| 1. Personal Income Per Capita, 1966 (\$)           | 1,475 | 2,454 | 2,144  | 1,428          |
| 2. Disposable Personal Income per capita 1966 (\$) | 1,391 | 2,145 | 1,912  | 1,379          |
| 3. Gross Product* per capita, 1966 (\$)            | 1,876 | 3,292 | 2,887  | 1,881          |
| 4. Corporate Profits* per capita, 1966 (\$)        | 135   | 322   | 259    | 140            |
| 5. Retail trade per capita, 1966 (\$)              | 915   | 1,212 | 1,105  | 911            |
| 6. Population Growth 1961 - 1966 (%)               | 3.2   | 11.6  | 9.7    | 4.1            |

\* O.E.A. Estimates

Office of the Economic Advisor  
Government of New Brunswick  
February 2, 1968





## OPENING STATEMENT

by

Mr JEAN-JACQUES BERTRAND  
PRIME MINISTER OF QUÉBEC

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## CANADIAN CONSTITUTIONAL CONFERENCE

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OTTAWA, February 10, 1969



OPENING STATEMENT

by

Mr JEAN-JACQUES BERTRAND

PRIME MINISTER OF QUEBEC

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CANADIAN CONSTITUTIONAL CONFERENCE

OTTAWA, February 10, 1969





I would like to express my gratitude to the Prime Minister of Canada and to the Prime ministers and Premiers of the other provinces for having accepted, at our request, the postponement for a few weeks of this conference, at first scheduled for last December. Being the one responsible for that delay, I want to apologize personally to the other delegations. Quebec has been much obliged by the forbearance with which the inconveniences of this change were accepted by all.

I would like also to pay a brief tribute to the man who headed Québec's delegation when this conference began its work in February 1968. You all know without my telling you what vital importance my predecessor and good friend, the late Daniel Johnson, attached to constitutional problems. His most cherished ambition was always to see our country adopt its own entirely new, all-Canadian constitution, one capable



of ending the misunderstandings which divide us and of putting the harmony between our two cultural communities on solid foundations.

There were those who wondered how the sudden disappearance of Mr Johnson might affect Québec's constitutional policy. While the style may change, it should be obvious that the substance of that policy cannot vary that much. Men may come and go, but the reality of Québec endures.

Thus I have not come to water down, much less to contradict, the many statements, briefs and other official documents which expressed Québec's attitude to this vital problem before or after the June 1966 general elections. I have come to support and throw more light on the proposals we have already made and also to show how urgently these solutions are needed.

In May 1963, when I introduced a motion in the Québec Parliament to institute a Parliamentary Committee on the



Constitution, I did so out of a sense of urgency, a feeling obviously shared by my colleagues on both sides of the House, since the motion was adopted without a dissenting voice. We were all alive to the seriousness of the crisis which, in its Preliminary Report published two years later - in February 1965 - the Commission on Bilingualism and Biculturalism was to describe as " the greatest crisis in our history " one " which threatens the very fact of Canada " .

Much more is involved in this crisis than human rights or the linguistic rights of minorities. The trouble lies far deeper and is more fundamental. To quote the Commissioners, " the vital centre is in danger : we mean the will to live together " . And in the same serious vein, they added that " Canada has come to a time when decisions must be taken and developments must occur leading either to its break-up, or to a new set of conditions for its future existence " .





## I Progress recorded

Fortunately, the Confederation of Tomorrow Conference which Ontario convened in November 1967 afforded us our first opportunity to embark on a thorough study of the question. Then, meeting here in February 1968, we agreed on the need to review together the various aspects of the constitutional problem, including the one Québec delegates consider most basic, that of the division of powers. I attended both conferences myself and I worked closely with Mr Johnson and my colleagues in preparing the briefs and other documents tabled there on Québec's behalf.

Since last year's meeting, a good deal of important work has been done by the Secretariat and the Continuing Committee of Officials. Meanwhile, Québec has taken considerable pains to make her views clear. Some sixty proposals have been drafted, bearing on all principal aspects of the constitutional review, as a working document likely to get



the constitutional talks off to a good start. As was agreed for documents of that nature, those proposals do not represent the final stance of the Québec Government; however they do form a whole that we to submit for consideration and analysis by other governments, the people of Québec and Canadian citizens everywhere.

This working document was made public, so that the whole population might read and discuss its contents. The time when constitutions could be thrown together in a few days behind closed doors is far behind us. Ours is the age of participation, and we believe it essential that every citizen be involved as closely as possible in the process of drafting our new constitution. For the same reason, I am pleased that today's proceedings are again taking place through television in front of the whole country.

I ask therefore all those who care about their country's future to obtain a copy of Québec's working paper and read it carefully, to comment on it and to discuss it publicly. As to



us, we have read with a good deal of interest the proposals made by the other governments.

## II The crux of the problem

Because of the huge amount of work that has already been done, because of the renewed awareness that is stirring Québec, because of the trend of thinking in the rest of Canada, I feel that we can no longer afford to dally with superficialities. We must go to the root of the problem and do so without further delay. We must squarely set ourselves in a dynamic frame of mind, work in the context of a growing society, of a new Canada that needs to be created, of young people who may not show the same patience as former generations.

Ours is not the only province which would like to see the constitution amended and I think that I am not far from the truth when I say that all provinces unanimously agree on the following objectives : (a) repatriating the constitution; (b) establishing amendment procedures; (c) revising the distribution of tax fields and tax revenues; (d) reducing regional





economic disparities; and (e) setting up the machinery for co-operation and adjustment through delegation of powers or otherwise.

Nor is Québec the only province suffering from flagrant disproportion between her responsibilities and her sources of revenue. In a nutshell, Québec is not alone in insisting on provincial autonomy. However, I might add that, besides the reasons common to all provinces, Québec has special grounds for valuing her autonomy. And these go far beyond the development of a linguistic heritage.

Indeed, language is not only a mode of expression : first and foremost, it is a way of thinking or - better still - a way of life. The Canadian duality therefore does not come merely from a difference in language; above all, it is due to different ways of approaching, feeling and reacting when confronted by events. A French Canadian is not the same as an English Canadian, differing only as to the tongue he speaks; he speaks differently because he is different.



Now, whenever an important issue is discussed between two groups that feel and react in such different ways, we witness the Québec Government instinctively identifying itself with the French-speaking majority in Québec, and the government in Ottawa instinctively identifying itself with the English-speaking majority in Canada, whatever the language or the cultural background of those who, in a given circumstance, constitute authority. Such is the iron rule of democracy which we cannot escape.

We would therefore be merely scratching the surface if we were to equate Canada's constitutional problem with a question of personal or linguistic rights. I am not saying that these rights are unimportant; what I am saying is that they do not reach the root of the problem which brings us here today.

If there is a crisis in Canada, it is not because our country is made up of individuals who speak different languages; it is because Canada is the home of two communities,



two peoples, two nations between which relations need to be harmonized.

The important thing for French Canadians from Québec is not to be allowed, as individuals, to speak their mother tongue even in regions of the country where it has little chance of being understood; what they want is the opportunity to live together in French, to work in French, to build a society in their image and to be able to organize their community life so that it will reflect their culture. And this cannot be achieved unless the Government of Québec has powers proportionate to the responsibilities it is expected by its population to shoulder. Without Québec, there might still be French minorities, but French Canada would no longer exist.

What we are seeking together, therefore, is the constitutional system most likely to reconcile the free growth of Canada's two cultural communities with the requirements of economic solidarity. And since it is mostly in Québec that





one of these two communities can ensure control over its destiny, the problem may be summed up by asking : what must be done to have a strong Québec within Canada ?

### III Federation as a solution

I believe that the best answer to this question still lies in a federal system of government, provided however it is an authentic federal system, not a deceptive front.

In order to achieve this authentic federalism, we must see to it that the distribution of powers between the two orders of government is not left to the goodwill of a central authority, but is based on a written constitution, recognized and respected by all as the country's fundamental law. In other words, there has to be priority of the constitution over the two orders of government, not priority of the central power over the federated states. Otherwise, even if we were to decentralize at the administrative level, we would still live within a unitary state, not a federal system.



At the present time, as a result of the evolution of society and the major part played by governments in activities which would have defied imagination one hundred years ago, it is absolutely essential and it is becoming increasingly urgent to re-examine the entire question as to how powers should be distributed between the central and the provincial governments.

Our present constitution - I almost said our old constitution - is silent on so many matters that it often gives us no inkling as to which sector of government is responsible for which field of endeavour. And above that, it is not always abided by. Thus in the long run, thanks to its financial resources, the federal government ends up with actual jurisdiction over matters where Québec's interest is vitally important.

This question is equally pressing for the other provinces. We all bear witness that our present constitution has not stood in the way of systematic and authoritarian federal



encroachment upon provincial jurisdiction, encroachment which, during the last few months, has assumed unprecedented proportions, abetted as it is by federal pre-emption of revenue sources at a moment when all the governments closer to the people suffer an increasingly paralysing want of financial means.

The present federal government, strengthened by its lion's share of tax funds - a situation against which we can never protest too strongly as being unjust and contrary to the legitimate aims of the provinces, thinks it can meddle everywhere : in educational radio and television, in cultural matters, in urban affairs, in off-shore mineral rights, in securities, in higher education, in university research, in water, air and soil pollution, in highway transportation, in foreign affairs even when they relate to education and other matters under provincial jurisdiction, in community development and even in civil law through succession duties. In its eyes, one would imagine that provincial governments are, at





best, administrative units expected always to play second fiddle to a rich, all-powerful and overbearing federal power.

Nothing proves this better than what seems about to take place in the field of health, which is clearly a provincial matter, and for which the federal government would extract money from tax-payers in all provinces so as to set up a system of which the vast majority are now in no position to take advantage. Contrary to the spirit and the letter of the constitution, direct taxes are levied for provincial purposes. Provincial government priorities are thwarted. And again as always, the tax-payer is the victim of this taxation chaos.

What is more, this taxation chaos has both economic and constitutional repercussions which we cannot overlook. The Québec Government is acutely aware that it must help give its people the economic tools they still lack, just as it is painfully aware of the wide disparities to be found between its different regions. And it knows it must make sustained efforts to spur development in more than one field.



But how can it possibly do this when the present division of tax revenue in Canada prevents it not only from taking sorely needed economic actions but frequently from discharging as fully as it would like all its constitutional obligations? The taxation problem is therefore inextricably bound up with constitutional review, since availability or lack of adequate financial resources is the one factor which determines whether each sphere of government can carry out its constitutional responsibilities in the manner expected of it. It is vitally important that the federal government understand what is at stake here – the country's very ability to function properly.

#### IV Towards a new constitution

For all these reasons, we need a completely new constitution, tailored to the ideas and needs of today. This is certainly the most important task we have ever decided to undertake together, because on it, the very future of our



country and the welfare of all our citizens directly depend. We may need a bill of human rights, but I say that we need also a bill of provincial rights.

Indeed, constitutional reform offers the only permanent solution for the deep crisis afflicting Canada. We need fresh agreement on basic issues; we must state very clearly the ground rules for relations between governments; we must reconsider the constitutional structure of our country, the form it is to take, the ends it is to pursue, so that our political institutions may not only meet the needs of the hour but those that will arise in days to come. Above all, it has become essential to give French Canada - of which Québec is the mainstay - a deep conviction that it can find in the Canadian federation all the elements requisite for its own development. Because we must recognize that for some time this feeling of confidence has been more and more subject to question and that doubts have crept into the minds of many Quebecers.





This questioning and uncertainty cannot last forever. Choices are inevitable. Movements have already come into being whose avowed purpose is to end the federal experiment. Hence it is more and more pressing to submit for our people's consent a new instrument of liberty and solidarity.

Obviously, Québec has very definite ideas about the main lines that must govern our new constitution. They will be found stated in the various briefs we have presented to past conferences and in the working document prepared by our officials.

We believe that in a country as ours, it would be neither wise, nor human, nor even efficient to wish every thing uniform. We think that, in certain fields, a right of option will always be necessary, not only to give Québec the degree of autonomy it needs but also to allow the other provinces to delegate to, or use jointly with, the central government those functions which they do not care to use



alone. It would be, in our opinion, an unfortunate mistake, of which we would all suffer, to insist that in all spheres the same measures apply in the same manner to all the provinces.

To those frightened by the drafting of a new constitution, I merely recall that on it depends the very future of Canada. I myself am convinced that the task is not beyond the intellectual scope, the inventive ability, the strength of friendship inherent in Canadians of either culture.

(Translation)









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GOVERNMENT OF QUÉBEC

**BRIEF**

**ON THE**

**CONSTITUTION**

Canadian Intergovernmental Conference  
Ottawa, February, 5-7, 1968





GOVERNMENT OF QUÉBEC

# BRIEF ON THE CONSTITUTION

Canadian Intergovernmental Conference  
Ottawa, February, 5-7, 1968

*Differ from CTC presentation  
- enough on Que as having distinct  
role in constitution of 72 Gov*



## T A B L E   O F   C O N T E N T S

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At the interprovincial "Confederation of Tomorrow" Conference, held in Toronto on November 27 to 30, 1967, the Québec Government made public a Preliminary Statement describing the Canadian constitutional situation as Québec sees it.

In the first half of that paper, we reviewed the century-old constitutional experience, the recent but continuing crisis, the present constitution's incapability of solving new problems except by an empiricism which grows constantly more alarming and, finally, the requirements of cultural and national duality. We concluded that there is need for a new constitutional covenant.

In the last half, after stating a number of fundamental principles, we outlined our views on the distribution of powers, the need for intergovernmental co-operation and the changes required in many Canadian institutions. We put particular stress on the linguistic rights and aspirations of French-speaking minorities.

At the end of our statement, we expressed our hope that further intergovernmental meetings would take place to carry on the dialogue just initiated. We take today's conference to be a continuation of that held in Toronto.

We therefore thought it unnecessary to go back today over the ground covered by last November's Preliminary Statement. We make a point of emphasizing, however, its fundamental character. Until such time as the factual situation



which it describes has been acknowledged, until the problems raised have been admitted and circumscribed, until the urgency of their solution has been recognized, until our proposals have been examined, it will be impossible to face Canada's future with confidence.



## A NEW CONSTITUTION

We believe it is our duty to repeat our deep conviction that the whole Canadian constitution needs review, correction, improvement and promulgation so as to give the country a new constitution made in Canada by Canadians and for all Canadians.

In fact, if to the matters raised by others, particularly in Toronto - i.e. repatriation, delegation of powers, machinery for constitutional amendments, human and language rights - we add the questions brought up by Québec in its Preliminary Statement, there is ample evidence of what we referred to as the "impotence" of the present constitution. There is no need to look elsewhere for the source of the current dissaray, persistent confusion and widespread dissatisfaction with political, economic, social and cultural trends in Canada.

In any event, the present Québec Government has come to one conclusion on which its position must be considered as final: Canada has achieved political and international maturity a long time ago and, consequently, she must be sole master over her constitution. In our opinion - and we believe that the majority of Canadians share this view - there is no longer any need for Canada to seek approval by the Parliament of Westminster before amending, adopting or repatriating the Canadian constitution. From now on, all that will have to be made in Canada alone.



## Cultural duality

From our discussions at Toronto, it is obvious that Canada is now facing two basic problems: the economic disparities between its regions and the state of relations between its two founding peoples. We wish to dwell especially on this last problem, for it is the root of what has been called the major crisis in Canadian history.

Cultural duality was already a problem in 1867. In fact, it was one of the main causes of the ineffectiveness of political institutions in the Province of Canada. Our ancestors went about solving this problem by two main remedies which can be summed up in two words: federalism and biculturalism . If indeed the 1867 Constitution embodies both the federal principle and the recognition of two official languages, this is largely due to the presence in Canada, along with the English language majority, of a French speaking community which even then was really a nation.

However, we have to admit that provisions made in the British North America Act for bilingualism are limited and even that its kind of federalism is highly centralized. Moreover, during the century since it was enacted, bilingualism has made scant progress and centralizing forces have continued their menacing operation. This is why the problem of cultural duality has reappeared in even more critical form in recent years.

How are we to cope with it ? By a new constitution which would make provision for an authentic bilingualism and for a decentralized federal system in which intergovernmental co-operation replaces centralization of powers.





### Québec's rôle

It is not by coincidence that in Québec, a greater interest for more extensive bilingualism accompanied our renewed political and cultural consciousness. In fact, the former stems from the latter. It is because we are striving to assert our language and culture in Québec more intensely that we ever did in the past that we are paying such close attention to their current situation and future prospects in other provinces. We want to build a strong Québec and at the same time help to create a bilingual and bicultural Canada.

However, the relationship between an increased recognition of French from coast to coast and a greater rôle for Québec in Canada is not always understood. Some think the two to be mutually exclusive, whereas they are actually complementary. Not until both of them have been attained will it be possible to achieve the equality which modern Québec seeks between the two founding peoples.

Equality could never be granted to a language or culture which would be in any danger of being eclipsed by that of the majority. Equality must exist in fact before obtaining legal confirmation. Only a language or culture, with a life and influence of its own, supported by solid social and political structures and capable of genuine creativity can hope to compete with others for respect. Only a society which shares such a language and culture can claim equal status.

Now, the vitality and influence of the French language and culture in Canada, and hence of the entire French-Canadian nation, have always depended and will always continue to depend first and foremost on the solidity of their mainstay, Québec. In fact, the history of French Canada shows conclusively that Québec, in all her dimensions, has been called



upon to play the part of a true national state with respect to French-Canada's language and culture. Because of the growing complexity of modern state obligations and of our nation's continuing will to assert itself, Québec is bound to go on playing this rôle. The main sectors of activity affecting the French-Canadian nation's growth and determining its future must accordingly depend on the Québec Government.

It should be recognized therefore by those who really believe in bilingualism for Canada that its achievement will depend not merely on the way French-language minorities are treated in the other provinces nor even on the extent to which federal institutions become bilingual, but above all on the measure in which each of the country's two majorities, the English-speaking and French-speaking, can find the internal conditions conducive to their own development. True bilingualism in Canada therefore assumes, as one essential component, acknowledgement of a distinctive rôle for Québec, mainstay of French Canada, as well as for her government.

The General Introduction to the Report of the Royal Commission on Bilingualism and Biculturalism contains pages which state in perhaps different terms ideas similar in our view to the ones underlying the preceding paragraphs and which we have often voiced in recent years. These conclusions, which were arrived at after lengthy consideration by the Commissioners, are so important that we thought they should be quoted in length.

"81. Finally, let us consider another dimension of equality between the two communities - the political dimension. This covers the possibilities for each society to choose its own institutions or, at least, to have the opportunity to participate fully in making political decisions within a framework shared with the other community.



82. The collective aspect of equality is here still more evident; it is not cultural growth and development at the individual level which is at stake, but the degree of self-determination which one society can exercise in relation of another. We have in mind the power of decision of each group and its freedom to act, not only in its cultural life but in all aspects of its collective life. We are no longer concerned with the characteristics which distinguish the two communities qualitatively, or even with their respective social and economic positions, but with the extent of the control each has over its government or governments. This is the basis for the discussion of the constitutional framework in which the two societies can live or aspire to live; a unitary or a federal system; special status for the province in which the minority group is concentrated; or again, for the same part of the country, the status of an associate state; or finally, the status of an independent state.

83. People who are used to making a clear distinction between problems of this type and cultural problems, or who even separate them entirely, will be surprised to see such a political dimension introduced here. Again we find a not unnatural difference between the outlook of a self-confident majority group and that of a minority which is well aware of its weakness. A politically dominant majority easily takes its advantages for granted and does not take into account the difficulties of the minority, especially when that minority is treated with a degree of liberality, or at least an appearance of liberality, in cultural matters. But as soon as the minority is aware of its collective life as a whole,





it may very well aspire to the mastery of its own existence and begin to look beyond cultural liberties. It raises the question of its political status. It feels that its future and the progress of its culture are not entirely secure, that they are perhaps limited, within a political structure dominated by a majority composed of the other group. Consequently, it moves in the direction of greater constitutional autonomy. Ideally, the minority desires the same autonomy for the whole of the community to which it belongs; but where it cannot attain this objective, it may decide to concentrate on the more limited political unit in which it is incontestably the majority group.

84. This viewpoint, so hotly opposed by some, is deeply entrenched in Québec. It has even been, in recent years, at the root of some of the most spectacular, if not the most serious, manifestations of the crisis in Canada. To ignore it in this Report would not only constitute an error; it would very likely mean that Québec would refuse to listen to us, and that English-speaking Canada would be deprived of the chance to become aware of an especially grave element in the present situation"...

89. We must work to develop and consolidate existing situations where they provide the possibility of establishing a certain equilibrium between the two communities. We know that Anglophones form the majority in nine of the ten provinces of Canada; Francophones form the majority in Québec. This is a state of affairs which should be turned to account. Indeed, the concentration of more than 4,000,000 Francophones in a single province is the only factor which gives some reality, at the outset, to the concept of



equal partnership. Québec constitutes an environment where the aspirations and the needs of four out of five Francophones in Canada can be satisfied. The mere fact of this concentration leads to a spontaneous French way of life and makes that way of life easier to organize. This why we believe the place of the Québécois in the French fact in Canada will in practice have to be recognized much more than it is today; we are thinking particularly of the world of work, in the federal public sector and in the private sector. But there is also a political aspect: Québec is the only province where French-speaking Canadians are in the majority and the English-speaking in the minority. Here the weight of numbers favour the Francophones, and it is a powerful lever. They can exercise a preponderant influence in their own province; they can also make themselves heard by the rest of the country, especially in the federal Parliament, and thus take an active part in the life of Canada. Of course there are risks involved. The problem can be succinctly formulated. How can we integrate the new Québec into present-day Canada, without curbing Québec's forward drive and, at the same time, without risking the breaking up of the country?

90. All these facts combine to give Québec a leading role in promoting the French language and culture in Canada, whatever may be the political solution finally adopted. This conclusion is in the nature of things; it is not the outcome of ideology or some messianic notion. In this sense it is an obvious and incontrovertible fact that Québec is not " a province like the others."



## Distribution of powers

What are these powers which must be given or confirmed to Québec in order to enable it to play " a leading role in promoting the French language and culture in Canada"?

To give a complete answer to this question, it will be necessary, when negotiations are eventually held on this subject, to make a survey of all constitutional jurisdictions and to differentiate those which should belong to the Government of Canada from those which must be allocated to the Provinces.

In our Preliminary Statement to the Toronto conference, we pointed out that the distribution of powers between the central government and the member-states remains the keystone of any federal constitution. We further indicated that, as is the case in most other federations, the Canadian provinces should retain all powers not expressly granted to the central government, in order to have a better idea where the latter's jurisdiction begins or ends as well as to reduce friction caused by encroachment from the centre. We also said it is vital to eliminate the federal prerogatives of reserve and disallowance and to curtail the declaratory power of Parliament. Our proposal in this respect and the importance we attach to it should not come as a surprise, since the interpretations which have been placed on these powers - residual powers in particular - lead to consequences which we find unacceptable. The recent Supreme Court ruling on off-shore mineral rights is a case in point. We also feel that the federal spending power should be limited to federal matters.

As we said last November in Toronto, we might be well advised to approach the task of drafting a new constitution by first allocating to all



provinces identical powers and making constitutional provision for delegation of some or all such powers to the federal government.

It is not for us to presume what powers the other provinces feel they should exercise under a new constitution. For our part, however, there are certain jurisdictions which the Government of Québec has often claimed and which should be set as the starting point of an immediate dialogue. By their very nature, these jurisdictions directly affect the vitality of the French-Canadian nation. We refer specifically to social security, relations with other countries, radio and television. 113

Of course, there are other fields whose socio-economic importance we fully recognize and which it will be advisable to discuss in detail when we reach the stage of drafting the new constitution; among others, we are thinking of marriage and divorce, immigration, film production and distribution, labour conditions and labour relations, road transportation and incorporation of companies.

#### (1) Social security

There are two main reasons behind Québec's strong insistence on regaining full control over social security: first, because the simultaneous presence of two governments in this area thwarts all effective planning, makes for contradiction between the various programmes and leads to waste and administrative overlap; second, because social security measures directly affect our nation in its intimate vitality.

Unfortunately, it is only too easy these days to demonstrate the absurdity of governments competition in social fields. Let's only think of health insurance and the tragic experience we are all going through in this regard. Whatever might





be the intrinsic value of such a programme, here is a federal initiative taken in an area under exclusive provincial jurisdiction, despite near-unanimous opposition from the provinces, despite unmistakable signs that it is economically ill-advised at this time, despite open opposition on the part of several federal Cabinet ministers. In this case, it can even be stated that, besides attempting to intervene and decide where provincial priorities lie, the federal government is seriously neglecting its own responsibility for the country's economic health. The fact that such a situation can arise after so many professions of faith in co-operative federalism and intergovernmental consultation clearly points to the need for constitutional change.

Moreover, amounts earmarked for social security are now so substantial that it is not enough to eliminate the more flagrant conflicts between federal and provincial policies. We must also make the planning necessary in order to use public funds with maximum effectiveness. Social security is a whole, each part closely linked with the others. For instance, it is impossible to set up a public assistance scheme based on the individual's or the family's right to the satisfaction of their basic needs without being concerned with the existence of an adequate system of manpower services and a satisfactory programme of family allowances. It is also imperative that all those measures to which one individual might have recourse at a given time, be so organized that all people faced with the same situation will be treated the same way. Finally, attention should be given to the system's balance, its relationship with relevant education and recreation measures, and its effect on the economic development of each region. Planning of this nature is so complex that it cannot be undertaken unless the necessary authority is vested in only one order of government.

Yet Québec has additional reasons for wanting full control over her population's social



security. As early as 1956, the Tremblay Commission, in its report on constitutional problems in Québec, stated in the chapter on social security: " If the Province of Québec wishes to fulfil effectively its constitutional mission as guardian of French-Canadian culture, it is obliged to conceive and organize its social life in conformity with the permanent demands of that culture. It must at all costs preserve its constitutional jurisdiction in the matter. It must also try alone to take the initiative in measures whose administration it has agreed to share with the federal government, upset as it has been by events." This position has always been endorsed by the majority of French-speaking Quebecers and all our provincial administrations since then have been inspired by it. It must be considered as a corner-stone of Québec's constitutional policy and an essential element of any constitutional reform.

Of course, we are aware that the changes we ask for might raise problems as regards income redistribution and free movement of people anywhere in the country. We feel, however, that such problems are not insoluble; on the contrary, we are convinced that the numerous social programmes now administered by the provinces can point the way towards finding the solutions needed. As far as we are concerned - and this is something which we have clearly stated before and which bears repeating - we are asking for Quebecers neither more nor less money than they would receive under federal programmes. We fully agree that steps must be taken to guarantee what is commonly known as "portability" of social benefits. We have stated also that, if Québec were to receive a larger share of taxes, we should be prepared to do our part in order to co-ordinate economic policies, something which would then be even more necessary than at present.

## (2) Foreign relations

Public opinion in our province is becoming increasingly alive to the necessity for Québec



to look beyond her boundaries and take an active interest in the work of certain international organizations. It would therefore seem that, unless their constitutional jurisdictions respecting foreign relations are clearly defined, the Governments of Canada and Québec are bound to have disagreements and misunderstandings of growing seriousness.

In today's world, there is an inevitable tendency for closer links to be established between governments, not only in the areas of traditional diplomacy but also in those of education, research, cultural affairs, labour, health and technology in general. Unless Canada means to live in isolation, she will necessarily be led to seek more and closer bonds with other countries in these very sectors.

Now most of these sectors are a provincial responsibility, and Québec obviously cannot allow them to be dealt with internationally by the federal government alone. The content of agreements in these fields has such a close bearing on the implementation of day-to-day policies that, if the federal government were to have a monopoly on international affairs, it would gradually take over de facto - if not de jure - internal jurisdiction over matters which, constitutionally, do not fall within its competence. This result would be hard enough to justify in a federal state with only one language and culture. In our federation where, because of her geographic and demographic position, Québec remains the mainstay of French Canada, it would also be tantamount to ignoring Canada's cultural duality.

We wish to reiterate for the record that Québec has never questioned the federal government's jurisdiction in matters of foreign policy. The areas in which we are interested are, in the field of co-operation and technical or cultural exchanges.

In our view, therefore, Québec should have, within the limits of Canadian foreign policy, a recognized capacity to negotiate and sign her own





agreements with foreign governments on matters subject to her internal jurisdiction. The Québec Government should also be regularly invited to participate in the Canadian's delegation at international conferences and at meetings of international organizations of which Canada is a member, and which touch on fields of provincial competence. Similarly, she should be empowered to attend international conferences of provincial interest in which Canada is not a participant. Finally, the Québec Government should be in a position to play a more substantial rôle in external aid. If these requests were given thoughtful examination, we are confident that solutions could easily be found which would satisfy both Québec's legitimate desire for self-assertion and the requirements of federalism.

Besides, we believe that Canada as a whole stands to gain by allowing the provinces to take more than an academic interest in the international dimension of fields which, under domestic law, fall within their jurisdiction. As we just pointed out, these matters are taking on growing significance in relations between countries. And in every instance, it is the provinces which have the human and institutional resources needed to make Canada's contribution worthwhile. Thus, it is not only important but useful that the provinces be called upon, one way or another, to participate more fully in our country's international endeavours. Juridical concepts formulated in bygone days when international activity centred mainly on questions of war and peace will have to be adapted accordingly.

### (3) Radio and television

Another area to which the Québec Government attaches the utmost importance concerns media for the dissemination of education and culture, particularly radio and television. As things now stand, the provinces are a long way from playing the part that should normally be theirs in this field. Since frequencies are controlled by Ottawa,



allocation of radio and television stations within Québec boundaries was made without our government being given the slightest voice in the matter. This situation results from the interpretation given by the courts to our constitution, and is unacceptable to Québec.

The changes required in this area will have to take into account the various components of broadcasting; we refer particularly to such organizations as the Board of Broadcast Governors and the Canadian Broadcasting Corporation. The composition of these two organizations must give a truer image of the country's bicultural dimension. To that end, a number - to be determined later - of members on the boards of directors of both organizations should be appointed directly by Québec. Air waves are rightfully considered to be in the public domain; they cannot and must not be the federal government's apanage. Just as programme content, allocation of frequencies can have serious repercussions at the cultural level. Québec cannot tolerate any longer being kept outside a field where her vital interest is so obvious, especially in view of the potential impact of audio-visual means of mass communication in educating both children and adults.



- II -

OTHER ITEMS

As for the other items mentioned on the agenda of the present conference, Québec has the following comments to submit.

1) Regional disparities

Redistribution of responsibilities will entail different allocation of tax resources. Arrangements on the extent of tax sharing in the various fields will still be desirable. Similarly, continuous co-operation will be necessary in determining the tax base so as to avoid double taxation and needless vexations for the taxpayer. For instance, any major overhaul of the structure of shared taxes should be made only after concerted action by all governments. Québec has always maintained this view and stressed it particularly at the recent Tax Structure Committee meeting on the Carter Report.

There might be apprehension in some circles - in fact it has often been expressed by the federal government - that a further tax transfer to the provinces could weaken the machinery of federal fiscal policies designed to stabilize economic activity or promote regional development. It might also be feared that such a transfer could lead to balkanisation of the country.

A net transfer of fiscal resources to the provinces would hardly lessen the effectiveness of economic stabilization and development policies. In fact, recent studies have shown that the federal government could easily apply an effective fiscal policy



with a much smaller share of personal and corporate income tax than it now has. In addition, one important fiscal policy instrument has long been, for all practical purposes, in the hands of the provinces and the municipalities which depend on them: we refer to public expenditures for goods and services. We firmly believe that, if we want economic stabilization and development policies to be effective, they must be designed and implemented through concerted action by the country's various governments. This is not a statement of principle or some sort of dogmatism, for there really is no other way out. Facts as they are urgently call for intergovernmental consultation.

As for the danger of balkanisation, we have always claimed it is non-existent and our recent experience proves it. When we opted out of certain shared-cost programmes - hospital insurance, to name one - we agreed to keep them portable. The same will be done for other social security programmes such as old age pension which Québec intends to take over. Similarly, the Quebec Pension Plan meshes with the Canada Pension Plan and ensures full portability of benefits.

All these questions concerning tax sharing, fiscal policy and economic development lead naturally to the regional inequality problem.

In discussing the distribution of powers, we said that economic disparity between the country's various regions is one of the two critical Canadian problems of the day, the other being relations between the two founding peoples.

We concentrated particularly on the latter, first because Québec is the mainstay of one of these founding peoples, but also because this is the first conference whose agenda has afforded an opportunity to deal with this specific subject. And there is no denying it urgently required earnest discussion.





However, Québec is naturally anything but indifferent to the problem of regional economic disparity, for she is to some extent a victim of it. For that reason and also because we believe that such conditions cannot be tolerated in a country as rich as Canada, we are prepared to study the implications of any new approach aimed at eliminating them. With full consideration for our respective constitutional powers, we are willing to co-operate with other governments in a large-scale assault on this problem. Of course, constitutional discussions have become necessary if the country is to survive; but the fact remains that the welfare of all Canadian citizens is still an absolute priority which the Québec Government fully endorses and for which it is firmly resolved to assume its responsibilities. Since this represents a major human problem, Québec offers her co-operation and welcomes that of other governments. Whatever the region he lives in, every Canadian citizen is entitled to an acceptable standard of living.

Regional economic disparity is common to all federations; however, we cannot attribute this to the system alone because it is often a pre-existing condition: on one hand, natural resources are not equally distributed between countries, nor between regions in the same country; on the other, the course of decisions, investments and institutions is influenced - for better or for worse, imperceptibly but daily - by individual or collective economic activity.

Removal of regional disparities is not the principal goal of a federation. Although the economic dimension is one of the elements which help shape a political system, it is not necessarily the determining or even predominant one. Geography and climate are also contributing factors, as are history, laws, traditions and sets of values, so that it is impossible to concentrate solely on the economic aspect when drafting or adopting a constitution. It would seem that our present constitution is partly



responsible for creating a false impression on this point since the only goal expressed in its preamble is "to conduce to the Welfare of the Provinces and promote the Interests of the British Empire".

While some disparities such as dearth or wealth of natural resources, climate, geographic location and the like stem from the very nature of things, others are however a direct result of federalism itself. In a federal system, many measures are taken globally and applied uniformly across the country; monetary and tariff policies are cases in point. These often tend to favour certain regions over others or, if they are restrictive, weigh more heavily on some parts of the country than on others.

Hoping to eliminate all these disparities would obviously be unrealistic, but an attempt can be made to lessen their effect. Such is the specific aim of equalization payments which tend to offset differences in tax yields. The formula now in use and worked out at the end of 1966 is a considerable improvement on earlier ones. However, it still presents a serious drawback by not making a sufficient distinction between the various provinces whose per capita personal income is below the national average. In some cases the difference is slight, but in others it is substantial. During the work of the Tax Structure Committee, Québec's representatives have suggested that an additional equalization payment be made to provinces whose per capita personal income falls short of the national average by 20 per cent or more. In present circumstances, this payment would apply only to the Atlantic provinces; it would provide them with funds for boosting their economy while contributing to eliminate regional disparities more rapidly. We hope this proposal can be studied as part of the work of this Conference.



The idea has often been advanced that shared-cost programmes would help to lessen regional disparities. Although this is true of some such programmes, the exact opposite holds for others since the wealthy provinces - because they are better equipped to shoulder the extra load - benefit at the expense of the have-not provinces which need them most. Our views on this topic are known. Suffice to say again that we prefer widening the tax fields, provided this be accompanied by an adequate equalization system.

In the past, frequent attempts were made to counterbalance certain unfavourable regional factors through special subsidies, but this raised a new problem: how to establish criteria for determining and allocating funds earmarked for such purposes. We hope that studies in this field will continue.

Another way to help reduce regional disparities is to provide incentives to capital investment in certain areas. Except for the Atlantic Development Board, or the tax incentives for industries establishing in designated areas and for a few similar cases, not many programmes work on this principle. We believe that closer consideration should be given to using this type of economic lever and we are quite willing to examine any new measure that would help improve the lot of numerous Canadians who have to live in relatively depressed areas.





## 2) Official languages

The Royal Commission on Bilingualism and Biculturalism has just given us the General Introduction to its final Report, as well as its Book I on the official languages. Nine Books still to come will deal with labour; education; the federal capital; Parliament, the Cabinet and the Supreme Court; voluntary associations; other ethnic groups; arts and letters; the mass media; and the general conclusions. Any attempt to pass judgment on the Commission's work at this stage would therefore be premature.

In our opinion, it is significant that Book I on the official languages is only the first of several volumes. For one could be led to believe that the problem of cultural duality - better still, cultural equality - is simply a matter of official languages, when in fact it is a much more complex question. By insisting in its General Introduction that the problem of biculturalism is primarily that of the intrinsic vitality of each culture considered separately, the Commission did Canada a great service.

Our reaction is naturally one of gratification at finding Québec so frequently held up as an example. The Commission conducted a thorough investigation into the official status afforded the English language in Québec and we feel we can take justifiable pride in the fact that it found no grounds for criticism in that regard. As a result, most of its recommendations do not apply to Québec since they are based on current practice in our province. This is why we have deemed it appropriate to abstain from elaborate comments on this subject.

The only recommendations which have any real implications for our government are those



pertaining to the federal capital, the establishment of bilingual districts, the adoption of an Official Languages Act and the appointment of a Québec Commissioner of Official Languages. We would like to make it clear that we agree generally with the facts established by the Commission and with the spirit of its recommendations. We do have certain reservations concerning the proposal to appoint Commissioners of Official Languages; in our view, it would be preferable to create a Permanent Federal-provincial Commission on Language Rights as we suggested in Toronto. Nor do we think it desirable for the federal government to take direct or indirect action in provincial fields of jurisdiction even if it were to induce the provinces in applying the recommendations of the Commission.

It is possible, even probable, that the Commission recommendation on bilingual districts could do much to solve the official-language problem in other provinces. We are not convinced however that it fits the situation in Québec. In fact, we believe that our present linguistic policy is far more generous than that which would result from widespread establishment of such districts. The system which has grown up in Québec with each successive generation is a combination of many **elements** based on customs and experience; it would not necessarily be improved by creation of bilingual districts. We sincerely believe that, over the years, we have really applied within our sphere the Commission's recommendations before they were formulated.

Some of our citizens have even protested against the place occupied by the English language in Québec. Let us state for the record that we shall not correct the awkward aspects of this situation - if one considers the appreciable advantages enjoyed by our English speaking minority - by depriving the latter of any fundamental rights. As a matter of fact, we are fully prepared to guarantee by new constitutional provisions - in a



form yet to be determined - the rights of the English language in Québec.

In this same spirit, it is only fitting that the rights of French in Québec be not only guaranteed but also expanded beyond the bare terms of a juridical document, in order to correspond to our demographic situation. In other words, even though English and French have and will continue to have official status, it is only natural for the Québec Government to show special concern for the French language and do everything possible to stimulate its vitality and encourage its use in all spheres. If all citizens in other provinces are required to have sufficient command of English as the language of the majority, it would seem fair that the same apply to Quebecers as regards French. Since both are universal languages, we do not believe it would be an injustice - on the contrary - if we were to make it easier for our English-speaking residents to study and use French.

Obviously, all the Commission's recommendations will have to be subjected to continuing and painstaking study. Meanwhile, we wish to assure all provinces planning to implement them and requiring Québec's co-operation in doing so that we shall do our utmost to help them in this task. We shall moreover be happy to participate actively in the works of the commission of this conference which, as we will recommend later, may be set up to deal with this question.

### 3) Human rights

The Government of Québec is conscious of the fact that, among achievements of the United Nations in the last twenty years, the Universal Declaration of Human Rights and the two covenants on





human rights rank very high on the Organization's list of outstanding contributions to international progress.

It is significant that, in terms of human rights, no distinction can be made between developed and underdeveloped countries. In this respect, all governments are more or less breaking new ground every day.

In Québec, legislation on freedom of religion was enacted over a hundred years ago. Our public school system acknowledges the rights of parents to have their children educated in either of Canada's two official languages and in accordance with their religious beliefs. Our Civil Code has long maintained a tradition for protecting the individual's rights. This tradition was built on the principles of civil liability and action for damages; it is even realized today that the Civil Code may have been underestimated as an extensive and efficient means of protection. Not long ago, the Legislature has dealt with specific problems raised by distinctions on the basis of race or other factors. Two major pieces of legislation were adopted forbidding hotels, restaurants and employers to discriminate against anyone because of race, religion or ethnic origin.

More recently, our Commission for Revision of the Civil Code drafted an amendment concerning civil rights, worded as a declaration of the individual's civil rights, and intended as a preliminary chapter to our revised Civil Code. Moreover, our government intends to submit this draft declaration to the Legislature before going on with the over-all revision of the Code.

The points on which, in the past, Québec and the rest of Canada seem to have differed in the field of Human Rights were related much more to the way of wording juridical principles and guaranteeing protection than to acknowledgement of the rights themselves.





The Government of Québec has committed itself to seeking early legislative adoption of a Quebec charter of human rights and to the appointment of an ombudsman. We have examined these two questions very closely during the past few months and hope soon to be able to introduce specific and relevant legislation before the Assembly.

The interest in human rights shown by the population of our Province is considerable not only on the part of the public bodies responsible for law enforcement, but also among the citizens themselves, who have set up a League of human rights.

As regards the proposal for a constitutional declaration of human rights, we have thought it advisable to reserve our position for a number of reasons, as follows:

Owing to their philosophical and juridical nature, bills of rights are difficult to put into words whenever attempt is made to incorporate effective sanctions. Just as it was relatively easy at the United Nations in 1948 to reach agreement by an impressive number of countries on a Universal Declaration of Human Rights of a general nature, so were these countries extremely careful in wording their own constitution to this effect.

The Universal Declaration of Human Rights contains no provisions for sanctions applicable either within a given state or on an international scale. As regards the 1966 international covenants on human rights and the related optional protocol, implementation on an international basis is guaranteed only by rather meek provisions. At the opposite, a constitutional text duly passed by a state's legitimate authority would likely be enforced very quickly by the courts, irrespectively



of whether public opinion is sufficiently sensitive to the problem and even before signs of favourable tradition become apparent.

In a unitary country with a homogeneous society, it is possible to think of bills of rights as summarizing the ethical philosophy endorsed by the whole population, and to allow all the other rights of the citizens to proceed from them. The result is the acceptance in the constitution of a trend towards homogeneity of ethical concepts whose recognition becomes the responsibility of the courts. We feel that in a federal system and especially in the case of Canada it would be a serious political error to proceed in this way. By tradition, civil law in Québec, and the manner in which it acknowledges and upholds fundamental rights, differ greatly from common law procedures. Should a bill of rights be considered so essential as to be entrusted in its interpretation to a constitutional court, we must insist on the institution of that tribunal being examined first.

A third difficulty stems from Canada's federal character and the present distribution of powers. Property and civil rights in this country are the exclusive responsibility of the Provinces. We are not prepared to waive this responsibility. As we have pointed out, we intend to incorporate into Québec's constitution a charter of human rights. Preliminary work has been carried out to this effect, and commented not only in newspapers of our Province but also in certain legal reviews. We were able to observe how very carefully these matters have to be handled.

Within a federative context, it is essential to specify clearly which authority will be responsible for ensuring that fundamental rights are respected. We mentioned earlier two possibilities which we rejected: first, that the federal government and federal courts be given exclusive powers in this field; second, at least as far as Québec is concerned, that there be indirect encroach-



ment on provincial jurisdiction as it relates to property and civil rights. Consequently, it seems wise for us for the moment to refrain from saying anything that might be construed as a preconceived attitude.

Generally speaking, moreover, we are inclined to believe that a bill of rights should be the last part to be added to the constitution. We are not suggesting that this part is of little importance or that it cannot be discussed from the outset; rather, we feel that it would more appropriately fall within the purview of an ad hoc commission appointed by this conference and whose recommendations would bear not only on the contents but also on the form and relative sequence of the bill or bills of rights in question. Myriad of examples can be drawn from other countries which have recently adopted constitutions.

We have gone rapidly through the federal draft proposal tabled in Ottawa on February 1st by the Minister of Justice of Canada.

Naturally, we were not able to give this text the full attention it deserves, but we are nonetheless in a position to make a few comments which will put the complexity of the subject into better focus:

a) The federal draft proposal indicates very well that if a Charter of Rights became part of the constitution, it would gain a character of permanence so that an amendment to that Charter would require not just an ordinary legislative decision but the more rigorous procedure of an amendment to the constitution itself. This is the very argument that we invoke in support of our request for a new constitution with a rigorous and entirely Canadian amending formula.

b) As constituent states of the federa-





tion, the Provinces are affected by all constitutional matters. No constitutional amendment should therefore be effected without the Provinces having been consulted directly and as a matter of priority. In other words, we do not accept that the Federal Government or any Provincial Government be able to go directly to the population, either by way of the Federal Parliament alone, or a referendum, or a Royal Commission, or a White Paper, without having beforehand consulted or sought the advice of the Provinces not only on the principle but also on the details of every proposal or provision. We therefore consider this White Paper as a simple working paper of the Conference, the advanced publication of which in no way creates a precedent.

c) Two of the documents appended, that is the international covenant on economic, social and cultural rights and the international covenant on civil and political rights (as well as the protocol relating to this latter covenant) contain a clause to the effect that their provisions shall apply without limitation nor exception whatsoever to all constitutive units of federated states. This clause is in direct opposition to our constitutional law and in no way can we accept it, for it would result in permitting the Federal Government to legislate in provincial matters under the cover of international agreements. It is high time a study in depth be made on this question of international agreements and of the international relations of the Provinces.

d) We have already indicated on several occasions that because of the way in which the Supreme Court is constituted, it is difficult to accept this court as a constitutional tribunal of last resort. This important point will have to be included in a new constitution before we can concur in a constitutional bill of rights. On this subject, we think it necessary to point out that the various agreements appended all provide for a special court to bring judgment in disputes between states in these matters.



e) We have noted on page 20, in relation to religious freedom, a reference to the Lord's Day Act. We feel that this does not come under Criminal Law, despite the opinion of the Supreme Court, but comes under the maintenance of public order, which comes within provincial jurisdiction. This example shows clearly that constitutional changes have become necessary before the adoption of a bill of rights.

f) The White Paper does not mention minority rights nor the rights of groups. One would have expected greater precision on the chapter of rights to equality.

g) Because bills of rights embrace very large categories, they give rise to either legislation of detail or interpretation by the courts. It therefore becomes extremely important that the residual categories of powers be clearly defined. We would be much less preoccupied with this if residual powers were attributed to the Provinces.

These few remarks will suffice to show why certain specialists hold that these matters are the last provisions that should be inserted in a constitution, and after having been the object of a report by an ad hoc committee.

Being of the opinion that fundamental freedoms are of prime importance for the future of Canada and having shown in the past its deep concern for the rights of minorities, the Government of Québec will bring a high degree of attention to this question. Not being able for the moment to go beyond a statement of principle, we nevertheless want to express our agreement with the motives which have inspired the various appended statements in the White Paper and we wish to assure the other Canadian provinces of our co-operation with them and with the Federal Government to protect freedoms and fundamental rights in the framework of a new constitution.



## CONCLUSION

The Québec Government believes the time has come to begin the process of constitutional reform. The requests which we have made in this brief and elsewhere are in our opinion, important enough to justify this conclusion. Its justification is even stronger if we add the other topics - human rights, language rights and regional disparities - which are on the agenda of this conference.

To sum up, Québec submits:

- 1 -- That the time has come for our country to give itself an entirely Canadian constitution made in Canada by Canadians and for all Canadians;
- 2 -- That this new constitution, as well as any future amendments to it, should be drafted and promulgated on behalf of a sovereign people without recourse to another country's parliament;
- 3 -- That the object of this constitution should be not only to federate territories but also to associate in equality two linguistic and cultural communities, two founding peoples, two societies, two nations in the sociological sense of the word;
- 4 -- That it is in no way necessary to break up the ten-partner Canada, to build a two-partner Canada, but that it has become essential and urgent to create a two-partner Canada in order to maintain the ten-partner Canada;



- 5 -- That Book I of the Laurendeau-Dunton Commission Report on the official languages, as well as those still to be published, should be studied in the light of facts and principles brought forth in the General Introduction which to us is the most significant part;
- 6 -- That the equality to be established between our two cultural communities depends not only on extending bilingualism territorially but even more on extending the jurisdictions of Québec, the homeland of the French-Canadian nation;
- 7 -- That the root of Canada's constitutional problem will not have been tackled in a concrete and realistic manner until a study has been undertaken of a new distribution of powers between the two orders of government;
- 8 -- That a constructive way to review this distribution of powers would be to begin with fields where there is immediate urgency; social security, relations with other countries and international organizations, instruments of education and culture as well as the various theories and formulas which tend to give indefinitely expanding powers to the central government;
- 9 -- That the question of fundamental rights is closely linked with the constitutional problem as a whole and thus no decision can possibly be taken in this respect before agreement has been reached on certain basic reforms, particularly on the creation of a true constitutional tribunal;
- 10 -- That consequently, the next step should be to institute federal-provincial commissions, meeting simultaneously with the aid of a joint secretariat to be set up without delay





and working in co-operation with the inter-provincial committee formed at the Toronto conference, and whose work could be divided into five main subjects matters:

- (a) official languages and fundamental rights;
- (b) distribution of powers;
- (c) reform of the Senate, the Supreme Court and the other institutions linked with the federal system;
- (d) fiscal incidences and regional inequalities;
- (e) amendment procedure and provisional arrangements.

Québec knows the complexity of the task that lies ahead. We must innovate to a large extent and build a new type of country. This cannot be accomplished in a matter of weeks, nor even months. Still, we must remember that time is not on the side of today's Canada.

( Translated from the French )















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